

ATTACHMENT 1

AGREEMENT BETWEEN THE CITY OF SEATTLE AND THE SEATTLE POPULAR MONORAIL AUTHORITY FOR GRANT OF NON-EXCLUSIVE USE OF A MONORAIL TRANSIT WAY AS RELATED TO THE SEATTLE MONORAIL GREEN LINE PROJECT

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**AGREEMENT BETWEEN THE CITY OF SEATTLE AND THE SEATTLE
POPULAR MONORAIL AUTHORITY FOR GRANT OF NON-EXCLUSIVE USE
OF A MONORAIL TRANSIT WAY AS RELATED TO THE SEATTLE
MONORAIL GREEN LINE PROJECT**

This AGREEMENT is entered into by and between the City of Seattle, a municipal corporation of the State of Washington and the Seattle Popular Monorail Authority, a duly organized city transportation authority existing under RCW 35.95A and is effective when signed by both parties.

RECITALS

WHEREAS, the Seattle Popular Monorail Authority, commonly known as the Seattle Monorail Project (“SMP”), is a city transportation authority created pursuant to Chapter 35.95A RCW by the voters of the City through their approval of Petition/Proposition No. 1 at an election held on November 5, 2002 and certified November 20, 2002; and

WHEREAS, in 2002, pursuant to state law, the Seattle voters approved Citizens’ Petition No. 1, which created the Seattle Monorail Project, approved the Seattle Popular Monorail Plan earlier adopted by the Elevated Transportation Company, and provided financing for phase one of the Seattle Popular Monorail Plan, an approximately 14-mile long monorail transit line known as the Green Line; and

WHEREAS, The City of Seattle (“City”) is a first class city operating under the laws of the State of Washington; and

WHEREAS, the City holds the streets and other rights-of-way within its jurisdiction in trust for the convenience of public travel and is authorized to grant to SMP the right to use such streets and rights-of-way for monorail transit purposes; and

WHEREAS, the Seattle City Council adopted and the Mayor concurred in Resolution No. 30448 stating the intent of the Seattle City Council and Mayor to allow use of City rights-of-way for construction and operation of a monorail transit system in Seattle and to negotiate an agreement with the SMP to allow this use; and

WHEREAS, the City Council adopted Resolution No. 30486 stating its commitment to working cooperatively with a new monorail authority to facilitate fast, coordinated, and cost-effective construction of a Seattle monorail system to serve the interests and needs of the citizens of Seattle; and

WHEREAS, SMP expects to enter into a single contract for final design and construction of the Green Line wherein the completion of the design and construction of the Green Line, which will be owned by SMP, will be the responsibility of the

contractor who will have discretion to propose precise locations of monorail transit facilities, and means and methods of construction consistent with this Agreement; and

WHEREAS, SMP in cooperation with the United States Coast Guard has issued a draft and final Environmental Impact Statement (“EIS”) pursuant to the National Environmental Policy Act and the State Environmental Policy Act for the Green Line Project; and

WHEREAS, on March 29, 2004, the SMP Board selected the location of and authorized the implementation of the Green Line monorail guideway alignment, stations and operations center for the Green Line; and

WHEREAS, in Ordinance 121500 the City Council approved locations for the monorail guideway, stations, and operations center for the Green Line;

NOW THEREFORE, in consideration of mutual promises and covenants herein related to the grant of a non-exclusive use of a monorail transit way by the City to SMP to construct, operate, maintain, and own a monorail transit system in the City of Seattle within and along the monorail transit way, the parties agree to the following terms and conditions:

SECTION 1. DEFINITIONS

For purposes of this Agreement, the following terms, phrases, words, and their derivations shall have the meaning given herein where capitalized; words not defined herein shall have their ordinary and common meaning. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, words in the singular number include the plural number, and the use of any gender shall be applicable to all genders whenever the sense requires. The words “shall” and “will” are mandatory and the word “may” is permissive. A reference to the City’s Charter refers to the same as amended from time to time. References to governmental entities (whether persons or entities) refer to those entities or their successors in authority. If specific provisions of law referred to herein are renumbered, then the reference shall be read to refer to the renumbered provision. References to laws, ordinances or regulations shall be interpreted broadly to cover government actions, however nominated, and include laws, ordinances and regulations now in force or hereinafter enacted or amended.

1.1 “Agreement” or “Transit Way Agreement” means this Agreement Between the City Of Seattle and the Seattle Popular Monorail Authority for Grant of Non-Exclusive Use of a Monorail Transit Way as Related to the Seattle Monorail Green Line Project, as approved by appropriate action of the City of Seattle and of SMP.

1.2 “Alignment Approval” means the approval by the Seattle City Council in Ordinance 121500 and its Exhibits.

1.3 “City” means the City of Seattle and any successor or assignee following an assignment that is not prohibited under this Agreement.

1.4 “Concurrence” for purposes of subsection 3.2, Monorail Guideway Design Submittals and Approval Milestones, means Seattle Department of Transportation’s (SDOT) acceptance of SMP’s proposed design concepts, preliminary design submittals, and/or in-progress design submittals. Concurrence represents SDOT’s intention to approve those elements of Final Construction Plans that are consistent with the accepted design concepts, preliminary design submittals and/or in-progress design submittals, subject to the limitation that the City shall retain its approval authority for Final Construction Plans and shall, at its sole discretion, determine the adequacy of those elements of Final Construction Plans.

1.5 “DBOM Contractor” or “Contractor” means the entity or entities that enter into a contract or contracts with the Seattle Monorail Project to design, build, equip, operate, and maintain the Project.

1.6 “Designated Representatives” means the individual identified by SMP and the individual identified by the City as each party’s designated representative. Although each Designated Representative is ultimately responsible for carrying out the responsibilities assigned to him or her through this Agreement, nothing in this Agreement precludes a Designated Representative from delegating duties to others within his or her organization as the Designated Representative deems appropriate. Each party shall identify its Designated Representative by written notice to the other party within thirty days of execution of this Agreement. Either party may change its Designated Representative through written notice to the other party’s Designated Representative.

1.7 “Emergency” means, except as otherwise provided, a sudden, generally unexpected occurrence or set of circumstances demanding immediate action to protect the public health and/or safety.

1.8 “Field Office” means the office or offices in which design of the Monorail Transit Facilities is carried out by SMP and/or the DBOM Contractor.

1.9 “Final Construction Plans” means prints showing in detail, the Monorail Transit Facilities and related improvements approved for construction in the Public Rights-of-Way pursuant to a Project Construction Permit, including all necessary clearances to structures for operational safety, and tied to existing City monumentation.

1.10 “Monorail Guideway” means the beams on which monorail trains run, their supporting columns and foundations and related structures, including but not limited to emergency walkways and power rails. When used in this Agreement with respect to Project Construction Permits, Final Construction Plans, Record Drawings, and/or the provisions of subsection 3.2, “Monorail Guideway” includes the permitting for related improvements to City’s Public Rights-of Way and capital facilities, including but not limited to West Seattle High-Rise Bridge Strengthening, roadway and site work, traffic

control infrastructure, street lighting, pedestrian facilities, landscape and urban design elements, utilities, and affected Private Utility Connections.

1.11 “Monorail Transit Facilities” means structures, Monorail Guideway, equipment, or other improvements of the Monorail Transit System, including but not limited to Monorail Transit Stations and related passenger amenities, power substations, maintenance and/or operations centers.

1.12 “Monorail Transit Station” means a Monorail Transit Facility, whether at grade or above grade, that provides pedestrian access to monorail transit trains and facilitates transfer from monorail to other modes of transportation. A Monorail Transit Station may include mechanical devices such as elevators and escalators to move passengers, and may also include such passenger amenities as informational signage, seating, weather protection, fountains, artwork or concessions.

1.13 “Monorail Transit System” means an approximately 14-mile long Green Line transportation system that uses train cars running on the Monorail Guideway, along with related Monorail Transit Facilities, owned or operated by SMP.

1.14 “Monorail Transit Way” means the areas of the City’s Public Rights-of-Way utilized by SMP for its Green Line Monorail Transit System, including Operational Clearances, as shown on the Final Construction Plans for a Project Segment during construction, and, after construction, as shown on Record Drawings on file with the City Clerk.

1.15 “Operational Clearances” means the distances required by the City between utility facilities and both the Monorail Transit Facilities and the dynamic envelope of the Monorail Transit System, as shown in the Final Construction Plans and Record Drawings, provided that in the event of a conflict the greater distance shall govern.

1.16 “Private Utility Connections” means those electric lines and water, drainage or side sewer pipes in Public Rights-of-Way or private property that are not owned by the City but connect end users to City-owned utilities.

1.17 “Project” means the entire scope of the Monorail Transit System project.

1.18 “Project Construction Package” means any subset of the Project or a Project Segment, as defined by its scope of work, that may be approved for construction by the City.

1.19 “Project Construction Permit” means any permit issued by the Seattle Department of Transportation approving Final Construction Plans for construction of a Project Construction Package, or any building permit for construction issued by the Department of Planning and Development.

1.20 “Project Segment” means any geographically defined subset of the Project.

1.21 “Public Rights-of-Way” means the areas above, below, on and over public streets (including, but not limited to, bridges) and easements which, under the City Charter, the Seattle Municipal Code, the City ordinances, and applicable law, rights, title or authority, the City may use for public transportation or utility purposes, may grant permits or licenses for use thereof, and has regulatory authority therefor.

1.22 “Record Drawings” means as-built drawings showing the location in detail of the Monorail Transit System’s Monorail Transit Facilities and related improvements in Public Rights-of-Way, including all affected utilities, capital facilities and Private Utility Connections, which shall be on Mylars and/or electronic files prepared in AUTOCAD or other computer program acceptable to the parties showing the as-built conditions consistent with Final Construction Plans and any changes to those Final Construction Plans that have been approved by the City’s Director of Transportation or Director of Planning and Development. Record Drawings shall be tied to existing City monumentation.

1.23 “Routine Maintenance and Operation” means SMP’s maintenance, repair and operation of the Monorail Transit System that does not require (i) the excavation of soil that would substantially alter or disturb the Public Rights-of-Way (including utilities located therein); (ii) the use of heavy machinery on or beneath the Public Rights-of-Way; or; (iii) changes to the structure of or support for any bridge. Routine Maintenance and Operation includes the use of machinery on the Monorail Guideway that would not interfere with or pose a hazard to surface or subsurface uses of, or surface or subsurface facilities in, Public Rights-of-Way.

1.24 “Seattle Popular Monorail Authority,” commonly known as the Seattle Monorail Project (“SMP”), means the city transportation authority created pursuant to Chapter 35.95A RCW, and any successor or assignee following an assignment that is not prohibited under this Agreement.

1.25 “Substantial Completion” has the meaning set forth in the Design-Build-Equip Contract as issued in the Seattle Monorail Project Request for Proposals to Design, Build, Operate and Maintain the Green Line, March 2004.

1.26 “Third Party” means any person other than the City, a City employee, SMP, or an SMP employee.

1.27 “West Seattle High-Rise Bridge Strengthening” means any changes to the structure of or support, improvements or modifications to the City’s existing West Seattle High-Rise Bridge necessitated by the Project, and any physical connections between the existing West Seattle High-Rise Bridge and Monorail Guideway.

SECTION 2. GRANT OF RIGHTS BY THE CITY

2.1 Grant of Non-Exclusive Use of A Monorail Transit Way. The City grants to SMP a non-exclusive use of portions of certain Public Rights-of-Way, the general location of which is described in the Alignment Approval, to be known as a Monorail

Transit Way, to construct, operate, maintain, and own a Monorail Transit System in accordance with the terms and conditions of this Agreement. The Monorail Transit Way shall be consistent with the Alignment Approval and more fully described in the Final Construction Plans and Record Drawings. This grant shall take effect upon the filing with the City Clerk by the Director of Transportation or Director of Planning and Development of approved Final Construction Plans; provided that the Final Construction Plans shall be replaced with Record Drawings, which may contain City-approved modifications from the approved Final Construction Plans. When the Record Drawings are filed with the City Clerk by the Director of Transportation or the Director of Planning and Development, the Monorail Transit Way shall be deemed to be modified in conformance with the Record Drawings. SMP expressly agrees that it will construct, operate and maintain the Monorail Transit System in compliance with this Agreement, including the conditions described in Exhibit C, and all applicable City ordinances, state and federal laws. SMP also expressly agrees that, except as set forth in this Agreement and other permits and approvals granted by the City for the construction and operation of the monorail, nothing in this Agreement is intended or shall be interpreted to limit the rights of the City to permit utilities and owners of Private Utility Connections to operate, maintain, repair, replace or add to their facilities within the Monorail Transit Way. Non-City-owned utilities will be responsible for the reasonable costs to move or replace any Monorail Transit Facilities if such action is required by their operation, maintenance, repair, replacement or addition to their facilities within the Monorail Transit Way. Nothing in this Agreement limits the City's ability to impose reasonable conditions on land use and street use permits, consistent with the City's policies and authority under the State Environmental Policy Act (SEPA) and consistent with Seattle Municipal Code provisions, including those pertaining to review and approval of Monorail Transit Facilities, Section 15.54.020 and Chapter 23.80, Essential Public Facilities. The City's exercise of SEPA authority shall not require an amendment to this Agreement.

2.2 Rights Limited to Monorail Transit System. The non-exclusive use of a Monorail Transit Way is granted solely for the purpose of construction, maintenance, operation, and ownership of the Monorail Transit System detailed in the Final Construction Plans, and for no other purpose. SMP intends, and shall have the right, to use the Monorail Transit Way solely for Monorail Transit System uses. SMP agrees that it shall not, without the City's prior written consent, (a) construct on or along the Monorail Transit Way any additions to or expansions of the Monorail Transit System subsequent to the construction done in accordance with the Final Construction Plans as approved by the City or (b) operate, repair, maintain, replace or add to Monorail Transit Facilities. Notwithstanding the foregoing, nothing contained herein shall prevent SMP from conducting Routine Maintenance and Operations of any Monorail Transit Facilities or equipment after initial construction. For purposes of this paragraph, the City's "consent" refers to the approval of the Director of Transportation or the Director of Planning and Development, as applicable, which consent shall not be given without plan review and approval by the Director of Seattle Public Utilities, Superintendent of Seattle City Light or Director of Seattle Center, as applicable.

2.3 Non-Exclusive Use. SMP understands that the rights granted herein are non-exclusive. The City shall have the right to agree to other non-exclusive uses or

occupancies of the Monorail Transit Way. The City agrees that such uses or occupancies shall not unreasonably impair the ability of SMP to operate the Monorail Transit System.

2.4 Use Restricted. This Agreement does not authorize the provision of any services by the SMP other than the services strictly related to the operation of the Monorail Transit System. SMP's use of the Monorail Transit Way for anything other than a Monorail Transit System shall require written permits or other approvals from the City. SMP shall not place any advertising on the Monorail Guideway except to the extent authorized by Seattle Municipal Code Chapter 23.55 (Sign Code) and Title 15 (Street and Sidewalk Use).

2.5 Ownership. SMP shall own all Monorail Transit Facilities on the Monorail Transit Way, except for improvements expressly transferred to the City. Nothing in this Agreement shall be construed as granting to SMP any interest or right in the Monorail Transit Way other than the rights expressly provided herein.

2.6 No Rights by Implication. No rights shall pass to SMP by implication. Without limiting the foregoing, by way of example and not limitation, this Agreement shall not include or be a substitute for:

A. Any other permit or authorization required for the privilege of transacting and carrying on a business within the City that may be required by the ordinances and laws of the City; or

B. Any permit or agreement for occupying any other property of the City or other public or private entities to which access is not specifically granted by this Agreement.

2.7 Delegation to DBOM Contractor. Completion of design and construction of the Monorail Transit System, and operation and maintenance thereof following Substantial Completion thereof, will be the responsibility of SMP's DBOM Contractor. Accordingly, many of the rights, responsibilities and duties of SMP hereunder will be undertaken and accomplished by the DBOM Contractor. The parties agree that the SMP shall have the right to delegate duties hereunder to the DBOM Contractor and the DBOM Contractor shall have the rights of entry onto, access to, and use and occupancy of the Monorail Transit Facilities for the purpose of carrying out such duties and all other duties the DBOM Contractor undertakes pursuant to agreements with the SMP. The City recognizes the DBOM contractor as the independent contractor of the SMP for the purposes of this Agreement and the City will permit the performance of the DBOM Contractor's duties. SMP agrees that it will provide the DBOM Contractor with a copy of this Agreement and will require compliance with this Agreement by the DBOM Contractor. Nothing contained herein relieves SMP of the ultimate responsibility for complying with all terms of this Agreement. The City and SMP agree that the City is an intended third-party beneficiary of SMP's contract with the DBOM Contractor wherever that contract is related to City-required improvements, repairs, or restoration of the Public Rights-of-Way, City-owned utilities, other City capital facilities or assets, and Private Utility Connections.

SECTION 3. DESIGN & CONSTRUCTION APPROVALS

3.1 Approval of Design and Construction

It is the City's intent:

- a) That design excellence throughout the Monorail system shall emphasize designs that are graceful and slender in appearance, and in scale with the surrounding neighborhood for the guideway, columns, and other system elements;
- b) That City approvals and other actions are performed in a cost effective and time-certain manner; and
- c) That Project completion is not unduly or unreasonably delayed by City permitting or other actions.

3.1.1 Approvals Required Prior to Construction.

A. Neither the Department of Planning and Development nor the Seattle Department of Transportation shall issue any Project Construction Permit until the City Council, after consideration of SMP's financial submittal described in this subsection 3.1.1 A, has voted by resolution to allow such issuance. The City Council has by resolution set forth the financial factors it intends to consider in determining whether to allow issuance of Project Construction Permits. The SMP shall provide in writing to the Council the following (collectively "SMP's financial submittal"): a list, explanation, and schedule of SMP's anticipated revenues and costs for construction and operations; SMP's plan for financing construction and operations, including the schedule for debt issuance, projected debt terms, and interest rate assumptions; a copy of the then-most-current draft or final version of SMP's annual financial report required by RCW 43.09.230; a copy of the then-most-current version of all financial statements drafted since the last annual financial report required by RCW 43.09.230; all materials submitted to rating agencies and/or potential credit enhancers, including a synopsis of major oral presentations made; SMP's Request for Proposals to Design, Build, Operate, Maintain the Green Line; copies of all reports by rating agencies; the finalized Design Build Equip Contract (DBEC) and Operations and Maintenance Contract (OMC) that the SMP Executive Director recommends to the SMP Board for approval (or the approved contracts if the SMP Board has approved them) that are not proprietary or otherwise required by law to remain confidential; and any other financial materials considered by SMP in its financial planning. The Council, or its designee, shall determine whether and when SMP has made a complete submittal. The Council's consideration of SMP's financial submittal and any vote to allow issuance of Project Construction Permits are solely internal City actions. The City shall have no liability whatsoever to SMP, its agents, potential credit enhancers, or purchasers of SMP debt, or to any other third parties, with respect to any aspect of such consideration or vote, including without limitation the content of or the Council's conclusions about SMP's financial submittal or the timing or nature of any such vote. Neither the City Council's consideration of SMP's financial submittal nor a vote to allow issuance of a Project Construction Permit is, or

shall be interpreted to be, a guarantee of the viability of the Monorail Transit System. Neither SMP nor its agents, potential credit enhancers, purchasers of SMP debt or any other third parties may rely on any aspect of the City Council's consideration of SMP's financial submittal. Any SMP official statement or similar disclosure document for SMP debt shall include substantially the following language:

“The [SMP] is not an instrumentality or subdivision of the City of Seattle, but is an independent political subdivision of the State of Washington. The [obligations] are not obligations of the State of Washington, the City of Seattle or any other political subdivision of the State other than the [SMP], and are payable only from the [pledged taxes and/or revenues].”

SMP also shall include substantially the foregoing in its oral presentations to rating agencies, potential investors, credit enhancers, and others concerned with rating, enhancing, or purchasing potential or actual SMP debt.

Furthermore, if any such official statement or disclosure document refers to the City Council's consideration of SMP's financial submittal or vote to allow issuance of Project Construction Permits, that official statement or disclosure document shall include substantially the following language:

(If after the City Council has voted to allow:) “The City of Seattle's consideration of SMP's finances or other factors prior to voting to allow issuance of Project Construction Permits may not be relied upon by investors for any purpose in making an investment decision with respect to the [obligations]. The City's consideration was solely to determine whether to allow construction of [SMP] improvements in City right-of-way. Neither that consideration nor the City Council's vote was undertaken for the purpose of determining [SMP's] ability or willingness to repay [obligations] to [bondowners] or to satisfy covenants relating to those [obligations].”

(If before City Council votes:) The City of Seattle's [anticipated or ongoing] consideration of SMP's finances or other factors prior to voting to allow issuance of Project Construction Permits may not be relied upon by investors for any purpose in making an investment decision with respect to the [obligations]. The City's consideration will be solely to determine whether to allow construction of [SMP] improvements in City right-of-way. Neither that consideration nor the City Council's vote will be undertaken for the purpose of determining [SMP's] ability or willingness to repay [obligations] to [bondowners] or to satisfy covenants relating to those [obligations].”

If SMP refers in its oral presentations to the City Council's anticipated consideration of SMP's financial submittal or vote to allow issuance of Project Construction Permits, SMP shall describe that consideration and vote in substantially the terms quoted above.

SMP may modify any of the above-quoted language with prior approval from the City's Director of Finance.

B. SMP shall obtain the approval of the Director of Transportation of SMP's overall sequence of construction prior to any construction work commencing on Monorail Transit Facilities. SMP may seek such approval as soon as SMP has received a proposed construction schedule from the DBOM Contractor. In providing this approval or requiring a change to the proposed schedule, the Director of Transportation shall comply with the intent of subsection 3.1 and make every reasonable effort to: 1) maximize the opportunity to complete as much of the Monorail Project as possible before major construction starts on the Alaskan Way Viaduct and Seawall Project; 2) maximize the opportunity to shorten the overall duration of construction for major capital projects in the downtown core; and 3) maximize the opportunity for coordination of major capital projects that may be occurring simultaneously, including but not limited to the retrofit of the Downtown Seattle Transit Tunnel and major construction of the Alaskan Way Viaduct and Seawall project, so that construction impacts to the downtown core are minimized. Consistent with the intent stated in subsection 3.1 and the criteria listed in subsection 3.1.1.B., the Director of Transportation may approve the schedule of start and completion dates for construction activities for any Project Segment and/or Project Construction Package, and may impose fees for construction activities in the Public Rights-of-Way beyond the approved completion date pursuant to Ordinance 121334, adopting a street use fee schedule imposing a surcharge on activities in streets that block traffic mobility.

C. SMP shall obtain the approval of the Director of Transportation of Monorail Transit Guideway Final Construction Plans prior to any such work commencing. SMP shall also obtain the approval of the Director of Planning and Development of Monorail Transit Stations Final Construction Plans, and related Monorail Transit Facilities Final Construction Plans (including maintenance and/or operations centers, power substations and other ancillary structures) prior to any such work commencing. If it appears that any City-owned utilities may be affected, consultation by the Director of Transportation or the Director of Planning and Development with the Director of Seattle Public Utilities and the Superintendent of Seattle City Light (as applicable) shall be a prerequisite to the approvals described in the first two sentences of this subsection 3.1.1.C. Regarding the relocation of City-owned utilities as described in subsections 4.1.3 and 4.2, the Director of Seattle Public Utilities and the Superintendent of Seattle City Light shall make the dedicated staff paid for by SMP available as necessary to meet the intent of subsection 3.1 and the overall sequence of construction approved by the Director of Transportation. For any Monorail Transit Facilities proposed for construction within the Pioneer Square Preservation District, issuance of a certificate of approval by the Department of Neighborhoods Director, after review and recommendation by the Pioneer Square Preservation Board, shall be a prerequisite to the approvals described in the first two sentences of this subsection 3.1.1.C. For any Monorail Transit Facilities proposed for construction on or above Seattle Center property, the approval of the Seattle Center Director also shall be a prerequisite to approvals described in the first two sentences of this subsection 3.1.1.C. When approving Final Construction Plans for the Monorail Transit Facilities, the Director of Transportation and the Director of Planning and Development may impose reasonable

conditions to address Project impacts as provided for in the Seattle Municipal Code and to implement the provisions of this Agreement. Approval for construction shall consist of the issuance of a Project Construction Permit, for each Project Segment or Project Construction Package to be constructed by SMP.

D. For any elevated walkway connection between the 5th & Stewart monorail station and Westlake Center, grant of a skybridge permit by the Seattle City Council shall be a prerequisite to approval of Final Construction Plans by the Director of Transportation.

3.1.2 Approvals from the Department of Planning and Development shall consist of Master Use Permits and Building Permits pursuant to Seattle Municipal Code (SMC) 23.76 and SMC Title 22. The issuance of a building permit or equivalent demolition or other construction permit from the Department of Planning and Development after review of final design drawings shall constitute approval of Final Construction Plans. The Director of the Department of Planning and Development shall make the dedicated staff paid for by SMP available as necessary to meet the intent of subsection 3.1 and the overall sequence of construction approved by the Director of Transportation.

3.1.2.1 Concept and Schematic Reviews for Master Use Permits. Review by the Monorail Review Panel of the Seattle Design Commission is required prior to submittal of Master Use Permit applications for Monorail Transit Stations and operations and maintenance centers. A second review by the Monorail Review Panel is required prior to issuance of a Master Use Permit for Monorail Transit Stations and operations and maintenance centers. SMP will provide sufficient notice of its schedule needs in order for the Monorail Review Panel to schedule its reviews in a timely manner. Specific review timeframes and schedules to accomplish this objective will be developed as provided for in subsection 3.6.

3.1.2.2 Design Development Reviews for Construction Permits. Review by the Monorail Review Panel of the Seattle Design Commission is required prior to submittal of Project Construction Permit applications for Monorail Transit Stations and operations and maintenance centers. This in-progress review shall include advanced detail and specifications of the form, finish and materials of all building and landscape elements, and integration of public art.

3.1.3 Approval from the Department of Transportation for Monorail Guideway elements shall be as described in subsection 3.2 below.

3.1.4 Construction Permitted Prior to Grant of Non-Exclusive Use. Prior to the approvals required in subsection 3.1.1 above, including approval of Final Construction Plans for Monorail Transit Facilities, the Seattle Department of Transportation and the Seattle Department of Planning and Development may, but shall not be required to, issue approvals to the SMP, pursuant to applicable City ordinances and regulations, for construction and other activities, excluding construction of Monorail Transit Facilities but including without limitation intrusive testing, utility relocations,

demolitions, shoring, street improvements such as traffic signals, and drainage improvements. SMP shall be responsible for acquiring all necessary permits, easements and rights-of-entry from third parties.

3.2 Monorail Guideway Design Submittals and Approval Milestones.
Requirements and approval milestones for the Monorail Guideway are as provided for in Exhibit D.

3.3 Standards & Requirements for City Rights-of-Way, Utilities & Capital Facilities.

3.3.1 Except as provided in this subsection 3.3 and subsection 9.3 of this Agreement and in Seattle Municipal Code Title 23, the City's Standard Plans and Specifications; Stormwater, Grading and Drainage Code; the Seattle City Light Standards and Construction Guidelines; and other City standards and requirements in effect as of the date of this Agreement shall be used for all Project-related work that either (a) is in any Public Rights-of-Way, or (b) affects, in any way, any utility or other capital facility or asset that is currently owned or controlled by the City or is expected to be maintained by the City, provided, that if more than twenty-four months elapses between the date of this agreement and the preliminary design submittal and the requirements in any of the aforesaid documents change during that time period, then the preliminary design submittal shall reflect such new requirements. The policies and protocols for hazardous substances management in Public Rights-of-Way shall be the policies and protocols developed, approved or amended in the future as provided in subsection 9.3. In addition, the SDOT Street and Sidewalk Pavement Opening and Restoration Director's Rule, when adopted, shall be used; provided that SMP may, at its option, use the draft version of the Director's Rule to be provided to SMP no later than July 1, 2004.

3.3.2 Project-Specific Standards & Requirements; Deviation from City's Standard & Requirements. The City's Designated Representative or another official designated by the City may permit, from time to time, a deviation from the requirements of subsection 3.3.1 whenever:

A. SMP has requested such permission in writing and has provided a justification for such request and an explanation for how SMP intends to address anticipated City concerns if such permission were granted, either in whole or in part, and a commitment to fund additional Project costs as required; and

B. The City's Designated Representative, or other official designated by the City, has consulted with and reached consensus among the head(s) or designated representative(s) of each City department and office that has an interest in the matter; and

C. SMP's requested deviation from the City's standards and requirements is deemed by such City department and office heads or their designated representatives to be acceptable under the circumstances; and

D. If necessary, the City's Designated Representative, or other official designated by the City, has been authorized to grant such permission, which permission

shall be expressed in writing by the City's Designated Representative or other official designated by the City, and shall not be used as a precedent for future actions.

3.3.2.1 If any conflict is discovered between SMP or City work under this Agreement and a City ordinance, code or regulation, or code or regulation of other entities with jurisdiction that obligates the City to ensure compliance, the City reserves the right, notwithstanding any other provision in this Agreement, to require changes to bring the Project work into compliance with any applicable ordinance, law, code or regulations; provided that as applied to the work to be completed under this Agreement, the City's standards and requirements as described in subsection 3.3 or a deviation authorized pursuant to subsection 3.3 shall control in the event of a conflict with any subsequent revisions of City standards and requirements.

3.3.3 Seattle Center Design Standards & Requirements.

Notwithstanding the foregoing, design standards and requirements related to the Seattle Center department and its facilities, exclusive of City-owned utilities on Seattle Center property, will be as determined in a separate agreement or agreements between Seattle Center and SMP.

3.3.4 Restoration of Public Rights-of-Way. SMP shall promptly repair any and all Public Rights-of-Way; City-owned utilities, capital facilities or assets; or Private Utility Connections that are disturbed or damaged due to the construction of its Monorail Transit System to a condition at least as good as prior to construction of the Monorail Transit System. In the event that SMP does not comply with the foregoing requirement, the City may, upon reasonable advance notice to SMP, take actions to restore the Public Rights-of-Way; City-owned utilities, capital facilities or assets; or Private Utility Connections at SMP's sole cost and expense.

3.4 Concurrent Review Provisions.

3.4.1 Concurrent Review at Field Office. To expedite design submittal review and to improve product quality, SMP will provide opportunities, and an appropriate number of workstations at the Field Office, for review by City departments and offices concurrent with design development by the Contractor and design review by SMP. Design review and coordination sessions will be held at least on a bi-weekly basis throughout the design phase between affected City departments and offices and SMP.

3.4.2 Purpose of Concurrent Review. The purpose of concurrent review by the City is to ensure the development of the highest quality system, and the most cost-effective resolution of problems. All efforts will be made to identify and resolve major design issues at the earliest possible stage of design development. The concurrent review process will not modify the design submittal requirements of subsection 3.2.

3.4.3 Concurrent Review-Guideway Design Concept Approval. In addition to the concurrent review provisions described above, SMP will include City representatives on an advisory committee to work collaboratively with SMP and its Contractor on the Monorail Guideway design concept. The City representatives will be

one representative each from Seattle Center, the Seattle Department of Transportation and the Department of Planning and Development. The City's Designated Representative will identify the City's representatives to the advisory committee, subject to the approval of the SMP's Designated Representative.

3.5 Construction Quality Control and Assurance. SMP intends to procure services from a firm that is independent of the DBOM Contractor for construction quality control and assurance. SMP will provide opportunities for the City to participate in the procurement of these independent quality control and assurance services, including participation in the development of the scope of services and in the selection of the independent quality firm. The City will make its best efforts, consistent with the best interests of the City, to coordinate City quality control and assurance efforts with those of SMP to maximize efficiency and minimize cost. The City retains its authority to inspect and approve all Monorail Transit Facilities and related improvements to City Rights-of-way, utilities and capital facilities. The parties intend to address the allocation of responsibilities for construction quality control and assurance in further agreements as described in subsection 3.6, Review Timeframes and Procedures, and subsection 4.2, Further Utility Agreements.

3.6 Review Timeframes and Procedures. Within 90 days of execution of this Agreement, the City and SMP shall enter into an agreement establishing review timeframes and procedures for the guideway design concept approval process described in Exhibit D. Within forty-five (45) days after SMP awards a DBOM contract, the City and SMP shall enter into an agreement or agreements establishing detailed review timeframes, procedures, staffing and reimbursement mechanisms for all other City approvals of Project design, change orders and for inspection and approval of construction. The agreement or agreements shall provide for detailed review timeframes and procedures that 1) are consistent with the intent stated in subsection 3.1; 2) facilitate the critical path of the overall sequence of construction approved by the Director of Transportation pursuant to subsection 3.1.1.B.; 3) call for specific comments and direction from the City to SMP or the DBOM contractor when reviewing submittals; and 4) provide certainty and consistency of approach that shall be used throughout the duration of the Project. Unless otherwise agreed by the Parties, Seattle Department of Transportation and the Department of Planning and Development shall set a goal of 14 business days and 21 calendar days, respectively, for review timeframes from intake through publication or issuance of permits.

In addition, the City, SMP, and the DBOM Contractor shall meet as soon as practicable after selection of the DBOM Contractor to discuss how to best accomplish the design review process that is consistent with the intent stated in subsection 3.1, and the overall sequence of construction approved by the Director of Transportation.

SECTION 4. PUBLIC & PRIVATE UTILITIES AFFECTED BY THE PROJECT

4.1 Utility Relocation.

4.1.1 SMP shall coordinate with all City-owned and non-City-owned utilities to minimize utility relocation costs, related construction and disruption to the public, and SMP shall negotiate with non-City-owned utilities on the terms of such utility relocation.

4.1.2 Non-City-owned utilities. The City and SMP recognize that the Monorail Transit System is a public transportation improvement. The City will cooperate with SMP by directing non-City-owned utilities to relocate underground, surface or overhead facilities in the Public Rights-of-Way that interfere with the construction or operation of the Monorail Transit System at the expense of the applicable non-City-owned utility, pursuant to Seattle Municipal Code Section 15.32.120 and other applicable law; provided, that the City shall have no such obligation to the extent that the City determines that any particular relocation requested by SMP is not feasible, practical or consistent with public health and safety. The parties agree that (a) the City shall determine what actions to take to obtain compliance with any directive that the City may issue with respect to the relocation of non-City-owned utilities and (b) the City shall not be liable to SMP for the failure of any non-City-owned utility to comply with a relocation directive. SMP shall reimburse the City for all expenses (including without limitation administrative expenses and legal costs) that the City may incur in seeking to obtain such compliance. Notwithstanding any other indemnification provision in this Agreement to the contrary, the SMP shall fully indemnify, defend and hold harmless the City with respect to any claim arising from the City's exercise of its authority to direct utility relocation to accommodate the construction of the Monorail Transit System; provided that, if principles of municipal law are involved, the City may undertake its own defense or select its own counsel at the expense of the SMP. The City shall cooperate fully with the SMP if the SMP is defending the City and shall consult with the SMP prior to settling any such claim.

4.1.3 City-owned utilities. The SMP shall pay, or reimburse the City for, all costs (including without limitation costs of design, construction, inspection, quality assurance, final acceptance and administration/overhead, but excluding betterments) associated with any relocation or protection of City-owned utilities (including without limitation, utilities under the jurisdiction of Seattle Center) that the City determines is (a) necessary due to construction or operation of the Monorail Transit System and (b) feasible, practical and consistent with public health and safety. Such costs shall include without limitation the costs of property acquisition, design, design review, construction, inspection, quality assurance review, final acceptance procedures, overhead/administration and legal review. SMP shall provide reimbursement for and City-owned utilities shall provide personnel necessary to timely complete city responsibilities for relocations in order to maintain the critical path of the overall sequence of construction approved by the Director of Transportation pursuant to subsection 3.1.1.B., and to make all reasonable efforts to complete City responsibilities for relocations prior to work commencing on the Alaskan Way Viaduct and Seawall

Project. In addition, SMP shall pay or reimburse owners for the costs associated with the relocation or reconstruction of Private Utility Connections, if such work is due to the relocation of City-owned utilities or construction of the Monorail Transit System.

4.2 Further Utility Agreements. Before SMP commences design of each Project Segment, the City and SMP shall enter into an agreement or agreements, acceptable to each party, regarding relocation or protection of City-owned utilities and Private Utility Connections, construction services related to such relocation or protection, and Operational Clearances. Such agreement or agreements shall address the parties' respective responsibilities for design, construction and related activities (including without limitation customer service) associated with relocations or protection of City-owned utilities and Private Utility Connections, specify logistics of design, construction, inspection and acceptance, and establish the mechanisms for SMP's reimbursement of the City; provided, however, that SMP shall be solely responsible for (a) all aspects of the relocation or protection of Private Utility Connections and (b) obtaining (by negotiation, condemnation or otherwise) and paying the costs of all property rights, permits and approvals that the City determines are needed for relocations or protection of City-owned utilities (regardless of whether construction of such relocated utilities is performed by the City or the DBOM Contractor). In such agreement or agreements, SMP and the City may agree that certain of these topics will be addressed in additional agreements between SMP and the applicable City department on a task-order basis.

4.3 Use of City Utilities. This Agreement shall not be read to diminish, or in any way affect, the authority of the City to control and charge for the use of its electric, water, storm, solid waste, and wastewater utilities. Therefore, if SMP desires to use such utilities it must (a) obtain necessary agreements or consents for such uses, as may be required by the City, which agreements or consents shall not be unreasonably withheld and (b) pay all applicable rates and charges for such utility services.

SECTION 5. RIGHTS OF ENTRY

5.1 Entry Upon Monorail Transit Way. Upon the issuance of any Project Construction Permit, SMP, its employees, agents, consultants, contractors, subcontractors and suppliers, shall have the right, as defined and limited pursuant to this Agreement, to enter upon the portion of the Monorail Transit Way described in the Project Construction Permit for the purpose of constructing, operating, repairing, maintaining, removing, occupying and using the Monorail Transit Facilities and conducting activities necessary and incidental thereto.

5.1.1 SMP, its employees and agents shall have access to the Public Rights-of-Way in connection with SMP's construction, operation, repair, maintenance, removal, use and occupancy of the Monorail Transit System as is reasonably necessary; provided however, except to the extent expressly provided in this Agreement, this right of access shall not be deemed to require the City to take any actions or expend any funds to enable such persons to exercise such rights of access, and provided further that such access may not interfere with or disrupt uses of the Public Rights-of-Way other than in ways approved in advance by the City.

5.1.2 SMP, its employees and agents shall have access to the Public Rights-of-Way on the West Seattle High-Rise Bridge in connection with SMP's construction, operation, repair, maintenance, removal, use and occupancy of the Monorail Transit System as is reasonably necessary; provided however, except to the extent expressly provided in this Agreement or other Agreement(s) between the City and SMP related to the Public Rights-of-Way on the West Seattle High-Rise Bridge, this right of access shall not be deemed to require the City to take any actions or expend any funds to enable such persons to exercise such rights of access, and provided further that such access may not interfere with or disrupt uses of the Public Rights-of-Way other than in ways approved in advance by the City.

5.2 Notice Prior to Initial Entry. Before construction starts on any Project Segment or Project Construction Package, SMP shall give the City at least forty-eight (48) hours written notice before initial entry upon the Public Rights-of-Way. Hours of construction shall be governed by SMC chapter 25.08 (Noise Control) and conditions placed by the City on individual Project Construction Permits for the purpose of mitigating construction impacts on traffic flow and on nearby uses.

5.3 Entry After Construction. Following completion of construction of all Project Segments of the Monorail Transit System, any entry by SMP onto the Public Rights-of-Way for purposes other than Routine Maintenance and Operation of the Monorail Transit System or to address an Emergency shall require (a) advance written notice from SMP or its contractor to the City, with copies to Seattle City Light and Seattle Public Utilities, not less than sixty (60) days prior to SMP's planned entry, with specification of the purpose of the entry; (b) if entry involves new construction or removal of any portion of the guideway, plans as required by the Director of Transportation or the Director of Planning and Development showing in detail the proposed new construction or removal; and (c) approval by the City, which approval shall not be unreasonably withheld or delayed, taking into account the nature of the proposed entry.

5.4 Entry for Routine Maintenance and Operation. During Routine Maintenance and Operation, SMP, its agents, consultants, contractors, subcontractors and suppliers, and their respective personnel may enter the Public Rights-of-Way without notice to the City, as long as such entry is for the sole purposes of Routine Maintenance and Operation and involves no disruption of traffic or utility service.

5.5 Emergency Access. In the event of an Emergency that interrupts or significantly disrupts operation of, or otherwise significantly affects, the Monorail Transit System and for purposes of taking immediate corrective action, SMP, its agents, consultants, contractors, subcontractors and suppliers, and their respective personnel may enter the Public Rights-of-Way without notice to the City, as long as such entry is for the sole purpose of addressing the Emergency, provided, that if any entry for such purposes is likely to require excavation of soil that would substantially alter or disturb the Public Rights-of-Way or use of heavy machinery upon the Public Rights-of-Way, SMP or its contractor shall give the City oral notice of the places where and the manner in which entry is required, prior to such entry, promptly followed by written notice and application

for a permit, and provided further, that SMP shall notify Seattle City Light or Seattle Public Utilities, as applicable, prior to taking action to address an Emergency that involves a City-owned utility. In the event of an Emergency involving facilities of a City-owned utility that is caused by operation of the Monorail Transit System or could be remedied only by cessation of such operation, the City reserves the right to require SMP to cease operation of the Monorail Transit System.

5.5.1 Notwithstanding any other provision of this Agreement to the contrary and regardless of whether or not an Emergency exists, (a) once the electric system has been energized, neither the SMP nor its contractor shall access or modify any Seattle City Light facilities, including without limitation vaults, service connections or ductwork and (b) neither the SMP nor its contractor shall access or modify any Seattle Public Utilities facilities.

5.6 Temporary Use of Public Rights-of-Way. During construction of the Monorail Transit System, SMP, with the prior written agreement of the City, may fence portions of the Public Rights-of-Way for the temporary storage of construction equipment and materials, provided that such structures and fences (a) do not interfere with or disrupt in any way, other than in ways approved in advance by the City, the ordinary use of the Public Rights-of-Way; (b) do not interfere with or disrupt in any way, other than in ways approved in advance by the City, the ordinary access to property on either side of the Public Rights-of-Way; (c) are not used for construction worker parking; and (d) do not unnecessarily limit the public's right to travel within the Public Rights-of-Way. SMP shall not store or temporarily place any goods, materials, or equipment (a) near a roadway, intersection, or crossing in such a manner as to interfere with the applicable sight distance of persons approaching such crossing; or (b) within such greater distance as prohibited by the City; provided, however, that no fuel and other hazardous substances shall be stored on Public Rights-of-Way unless approved in advance by appropriate officials of the Seattle Fire Department.

5.7 Permits and Licenses Required.

5.7.1 Permits and Licenses. SMP, at its sole cost and expense, shall secure and maintain in effect, all federal, state and local permits and licenses required for the construction, operation and maintenance of the Monorail Transit System, including, without limitation, crossing, zoning, building, health, environmental, and communication permits and licenses. The City shall cooperate with and assist SMP in securing and maintaining any such permits or licenses.

5.7.2 City Shall Not Hinder. The City shall not hinder SMP's efforts to secure, obtain, and maintain any permits, licenses or approvals of other governmental agencies or authorities, or of any necessary Third Parties, for the use of any structures or facilities (including streets, roads or utility poles) for the Project, except that nothing in this provision, or elsewhere in this Agreement, shall require the City, when acting in its regulatory capacity, to take, or to refrain from taking, any action that is within its regulatory authority.

SECTION 6. OPERATION, MAINTENANCE & REPAIR

6.1 Compliance with Laws, Rules, and Regulations. SMP shall operate, maintain, repair and replace its Monorail Transit System in compliance with all applicable federal, state, and local laws, ordinances, departmental rules and regulations affecting such system, which includes, by way of example and not limitation, the obligation to operate, maintain, repair and replace in accordance with City codes and standards. In addition, the operation, maintenance, repair and replacement shall be performed in a manner consistent with industry standards. SMP shall exercise reasonable care in the performance of all its activities and shall use industry accepted methods and devices for preventing failures and accidents that are likely to cause damage to the environment or Public Rights-of-Way, or injury or nuisance to the public. SMP agrees that, except as otherwise specifically set forth in this Agreement, the laws, ordinances, rules, regulations and industry standards referred to in this subsection 6.1 are subject to change over time and that the most current versions of such laws, ordinances, rules, regulations and industry standards shall apply.

6.2 Incremental Costs Reimbursement. SMP shall operate and maintain the Monorail Transit System in such a manner as to minimize disruption to other users of the Public Rights-of-Way. SMP and the City shall make reasonable efforts to develop and agree upon design solutions for the Monorail Transit System that avoid or minimize Incremental Costs for maintenance, operation, repair or replacement of, or additions to, Seattle City Light, Seattle Public Utilities, and Seattle Department of Transportation capital facilities and infrastructure(collectively, “City Operations”). If such costs cannot be avoided, SMP shall reimburse the City periodically for identified Incremental Costs. “Incremental Costs” shall mean the amount by which the total, actual cost for City Operations exceeds the total cost that the City would have incurred for such City Operations if (a) Monorail Transit Facilities had not been constructed or operated as part of the Monorail Transit System or (b) capital facilities of Seattle City Light, Seattle Public Utilities or Seattle Department of Transportation had not been modified to accommodate the Monorail Transit System. Within a reasonable time after construction of the Monorail Transit Facilities, SMP shall enter into subsequent agreements with the City departments noted above identifying the Incremental Costs and establishing reimbursement procedures. The calculation of Incremental Costs shall take into account quantifiable cost increases and cost savings to the applicable department.

6.3 Permits Required. Except in cases of emergency repairs, SMP’s operation, maintenance, replacement or repair of its Monorail Transit System, or any Project Segment of Project Construction Package thereof, shall not commence until all required permits have been properly applied for and obtained from the proper City officials (and/or State and Federal officials if applicable) and all required permits and associated fees paid. In case of emergency repairs, appropriate permits shall be applied for no later than the first business day following repairs.

6.4 Level of Operation/Maintenance. All Monorail Transit Facilities shall be operated and maintained in such a manner as to minimize disruption to other users of the Public Rights-of-Way. SMP or its operator shall ensure that the Monorail Transit

Facilities are kept free of graffiti, handbills, signs and posters. The Monorail Transit Facilities shall be inspected on a regular basis and all graffiti, handbills, signs, and posters shall be removed within one business day of their discovery. SMP shall establish a Monorail Monitor and Maintain Working Group consistent with the FEIS to be responsible for monitoring compliance with each mitigation measure in Exhibit C and for monitoring the implementation and effectiveness of the mitigation measures.

6.5 Appointment of Operator. SMP may appoint an operator as SMP's independent contractor with authority and responsibility to exercise some or all of SMP's rights under this Agreement, subject to the terms and conditions of this Agreement. Nothing contained herein relieves SMP of the ultimate responsibility for complying with all terms of this Agreement.

6.6 Regulatory Approvals. SMP and its operator shall obtain and maintain all federal, state and/or local regulatory approvals as may be required for the operation, maintenance, repair and replacement of, and addition to, the Monorail Transit System.

6.7 Responsibility for Equipment. The City shall have no responsibility for inspecting, maintaining, servicing or repairing any trains or other equipment used by SMP as part of the Monorail Transit System, but all such equipment shall at all times comply with applicable federal, state, and local governmental requirements.

6.8 Prompt Repair. In the event of any damage to the Public Rights-of-Way, City-owned utilities, non-City-owned utilities or Private Utility Connections, bridges, roadway structures or other City capital facilities caused by or arising from the construction, operation, maintenance, repair or replacement of its Monorail Transit System, SMP shall immediately notify the applicable owner. With such owner's prior approval, SMP shall promptly repair any and all damage. Alternatively, the City may, after notice to SMP, make the necessary repairs and be reimbursed by SMP for all reasonable costs incurred to repair the damage to its facilities. Owners of Private Utility Connections may make such necessary repairs and be reimbursed by SMP for all reasonable costs incurred to repair the damage to their facilities only after notice to and written agreement of SMP. Public Rights-of-Way, City-owned utilities, bridges, roadway structures and other City capital facilities, and Private Utility Connections must be restored to substantially the same condition as before the damage occurred, or in the case of street surfaces, to better condition if necessary for the Monorail Transit System use. Repairs to the West Seattle High-Rise Bridge must include repair of any damage to the supporting structural elements of the bridge, subject to written approval by the Director of Transportation of all repair plans and specifications. In addition, in the event of damage to the West Seattle High-Rise Bridge caused by a seismic event, windstorm, or other natural occurrence, SMP will be responsible for the cost of repair needed to restore the West Seattle High-Rise Bridge Strengthening. For any repair work performed by SMP, SMP shall obtain the necessary permits and design approvals from the City prior to undertaking such repairs. In the event that any damage is caused by the sole or concurrent negligence of the SMP or City, SMP shall be responsible for repairing, or choosing not to repair, its Monorail Transit System. If SMP chooses not to repair the damage, the City shall have no liability. If SMP chooses to repair the damage, the City

shall reimburse SMP for the reasonable cost of repair, to the extent of the City's sole or concurrent negligence.

6.9 Emergency. In the event that the Monorail Transit System causes, in whole or in part, an Emergency, that SMP or its contractor(s) is unable to timely address, the City may protect, support, temporarily disconnect, remove, or relocate any or all parts of the Monorail Transit System or the City's utilities or other capital facilities without prior notice, and charge SMP for costs incurred. The City may charge SMP for costs incurred only to the extent the Emergency has been caused by, or arises from, the operation of the Monorail Transit System, including any potential fines from other regulatory agencies. If an Emergency arises that is not caused by the Monorail Transit System but impacts the Monorail Transit System and a City facility, the City may protect, support, or temporarily disconnect any or all parts of the Monorail Transit System or the City's facilities to provide temporary or permanent repairs. If action is taken by the City pursuant to this paragraph, the City shall provide prior notice of such action, or if prior notice is not possible, then the City will provide notice to SMP as soon as possible. Wherever possible, SMP or its contractor(s) shall be allowed to address any such Emergency prior to City action pursuant to this paragraph.

6.10 No Traffic Control Devices Without Permission. SMP will not install any traffic control devices, other than on the guideway to control monorail transit trains, without the written consent of the City. Such consent may be incorporated into Project Construction Permits.

6.11 Traffic Signal Modifications. As part of SMP's plans for the Monorail Transit System, SMP may propose the installation of certain new traffic signal devices in the Public Rights-of-Way. SMP shall submit to the City for approval any such proposed work that is part of the Monorail Transit System. SMP shall provide the City with all necessary hardware and software components required for any such traffic signals included in the Monorail Transit System project and shall pay all direct costs of installation including necessary direct labor of City employees. This paragraph addresses traffic signal devices proposed by SMP as part of the Project, and does not address mitigation lawfully required by the City, pursuant to the State Environmental Policy Act or other authority, for which SMP may potentially be required to pay mitigation costs based on Project impacts.

6.12 Operational Clearances & Utility Coordination. Except for Emergencies, when operating, repairing, maintaining or replacing Monorail Transit Facilities, SMP will not intrude into Operational Clearances, without notice to and prior approval from the City. Should SMP need to relocate any non-City-owned utilities during repair, maintenance or replacement activities for Monorail Transit Facilities, subsection 4.1 of this Agreement shall apply to those relocations. Should SMP need to relocate any City owned utilities or Private Utility Connections during repair, maintenance or replacement activities for Monorail Transit Facilities, prior written approval of the City will be required prior to any such relocation, and SMP shall pay for any such approved relocation. Except for Emergencies, when operating, repairing and/or maintaining any City facilities, the City will not intrude into the operational clearances set by SMP and

shown in the Final Construction Plans and Record Drawings, without notice to and prior approval from SMP. SMP shall not impose any additional Operational Clearances except with the written agreement of the City.

SECTION 7. THIRD PARTY RIGHT-OF-WAY OWNERSHIP

The rights granted to SMP in this Agreement apply in the City's Public Rights-of-Way and do not grant any rights in lands other than the Public Rights-of-Way. The parties understand that the SMP is acquiring Monorail right-of-way on and across property other than Public Rights-of-Way for location of Monorail Transit Facilities, including portions of Monorail Guideway.

SECTION 8. RELOCATION OF MONORAIL TRANSIT FACILITIES

If the City desires the relocation of a portion of the Monorail Transit Facilities to accommodate the City, the City shall notify SMP of such fact, and SMP shall consult with the City regarding such request.

SECTION 9. RISK ALLOCATION

9.1 Limits of Liability.

9.1.1 Obligation of SMP Limited to Corporation. Any and all obligations of the SMP under this Agreement are enforceable only against the Seattle Popular Monorail Authority, a duly organized city transportation authority existing under RCW 35.95A, and are not enforceable against nor do they impose any form of liability upon SMP's officers, directors, trustees, or employees or any other individual or entity, public or private, except as otherwise provided in this Agreement.

9.1.2 Obligation of the City Limited to Corporation. Any and all obligations of the City under this Agreement are enforceable only against the City, a duly organized municipal corporation existing under the laws of the State of Washington, and are not enforceable against nor do they impose any form of liability upon City's officers, Council members or employees or any other individual or entity, public or private, except as otherwise provided in this Agreement.

9.1.3 No City Liability for Approvals. The approval of any Project plans or specifications by any City official is for the City's sole benefit and shall not and does not constitute an opinion or representation by the City as to their compliance with any law or ordinance or their adequacy for other than the City's own purposes; and such approval shall not create or form the basis of any liability on the part of the City or SMP or any of their officers, employees or agents for any injury or damage resulting from any inadequacy or error therein or any failure to comply with applicable law, ordinance, rule or regulation; and such approval shall not relieve the SMP of any of its obligations under this Agreement.

9.1.4 No City Liability for Delay, Consequential or Liquidated Damages. The City shall not be liable in damages for any failure to act within time limits

established by law or other delay in issuing permits, other approvals, or concurrences to SMP, its DBOM Contractor or other contractors, nor shall the City have any liability for consequential or liquidated damages, and, to the maximum extent allowed by law, SMP shall protect, defend, indemnify, and save harmless the City, and its officers, officials, employees, and agents, from any and all costs, claims, demands, judgments, damages, or liability of any kind caused by, resulting from, relating to, or connected to delays in issuing permits, other approvals, or concurrences and such claims shall be dealt with under this subsection 9.1.4 and not under subsection 9.2.1.

9.1.5 No City Liability for Third Party Claims of Diminution in Value of Property. The City shall not be liable in damages for any third party claims alleging diminution in value of property, including but not limited to claims of elimination or impairment of rights to light and air and quiet enjoyment, or alleging a taking of property rights, nor shall the City have any liability for related consequential or liquidated damages, and, to the maximum extent allowed by law, SMP shall protect, defend, indemnify, and save harmless the City, and its officers, officials, employees, and agents, from any and all costs, claims, demands, judgments, damages, or liability of any kind caused by, resulting from, relating to, or connected to the third party claims of diminution in value of property arising out of design, construction, operation, maintenance, repair, replacement, or removal of the Monorail Transit System and such claims shall be dealt with under this subsection 9.1.5 and not under subsection 9.2.1.

9.1.6 DBOM Contractor's Bonds. SMP shall require its DBOM Contractor to provide performance and payment bonds to the SMP and maintain said bonds at all times pertinent to the DBOM Contractor's respective obligations under the Design Build Equip and Operations and Maintenance Contracts. The penal sums of said bonds shall be commercially reasonable and consistent with the limits set for similarly sized design, build and operate projects in the United States. Unless SMP and the Director of Transportation jointly determine that such bonds naming the City as an additional obligee are not commercially practicable and available at a reasonable additional cost to SMP, SMP shall require its DBOM Contractor to name the City as an additional obligee on any performance, repair or removal bonds provided by the DBOM Contractor to SMP, provided that the City's right as an obligee on any bond provided by the DBOM Contractor shall be limited to those provisions of the Agreement that are related to the removal of Monorail Transit Facilities and/or the improvement, repair, or restoration of the City's Public Rights-of-Way, City-owned utilities, other City capital facilities or assets, and/or Private Utility Connections. Such bonds shall be executed by a surety company authorized and licensed to do business in the State of Washington; listed on the Department of the Treasury's Listing of Approved Sureties (Department Circular 570); and subject to the underwriting limitation published therein on a per bond basis or written with a penal sum over the underwriting limitation as long as the excess amount is protected with reinsurance, coinsurance or other methods as specified at 31 CFR 223.10-11.

9.2 General Indemnification.

9.2.1 To the extent permitted by law, each party to this Agreement shall protect, defend, indemnify, and save harmless the other party, and its officers, officials, employees, and agents, while acting within the scope of their employment, from any and all costs, claims, demands, judgments, damages, or liability of any kind including injuries to persons or damages to property, which arise out of, or in any way result from, or are connected to, or are due to any negligent acts or omissions of the indemnifying party. No party shall be required to indemnify, defend, or save harmless the other party if the claim, suit or action for injuries, death or damages is caused by the sole negligence of the party seeking indemnification. Where such claims, suits, or actions result from concurrent negligence of the parties, the indemnity provisions provided herein shall be valid and enforceable only to the extent of the party's own negligence. Each party agrees that its obligations under this subsection 9.2 extend to any claim, demand, and/or cause of action brought by, or on behalf of, any of its employees or agents. In the event of any claims, demands, actions or lawsuits, the indemnifying party upon prompt notice from the other party shall assume all costs of defense thereof, including legal fees incurred by the other party, and of all resulting judgments that may be obtained against the other party, to the extent of the indemnitor's liability. In the event that any party incurs attorneys' fees, costs or other legal expenses to enforce the provisions of this subsection 9.2, all such fees, costs and expenses shall be recoverable by the prevailing party. Environmental release and indemnification shall be as provided in subsection 9.3.12 below.

9.2.2 Waiver of Immunity. Solely with respect to claims for indemnification under this Agreement, including subsection 9.3.12, the City and SMP waive, as to the other only and expressly not for the benefit of their employees or third parties, their immunity under Title 51 RCW, the Industrial Insurance Act, and acknowledge that this waiver has been mutually negotiated by the parties hereto. SMP shall require its contractors and subcontractors to provide this same waiver as to the City.

9.2.3 Survival of Indemnification Obligations. Any liability of the parties hereto for acts or omissions occurring during the term of this Agreement, including subsection 9.3.12, or arising under any indemnity provision of this Agreement, shall survive termination and surrender (whether or not any claim giving rise to such liability shall have accrued).

9.3 Environmental Protection And Indemnification.

9.3.1 Intent: This subsection 9.3 expresses the parties' intent and agreements relating to prudent practices for protecting human health, the environment and the Public Rights-of-Way (including without limitation utilities therein) from Hazardous Substances or contamination that may be related to or discovered during construction or operation of the Project. In addition, this subsection 9.3 allocates to SMP responsibility for environmental cleanup and cleanup costs on, in, under or adjacent to the Public Rights-of-Way caused or necessitated by construction or operation of the Project, including utility relocations related to the Project, and provides for a protocol for

addressing Hazardous Substances or contamination discovered during construction or operation of the project.

9.3.2 Definitions: For the purpose of this subsection 9.3, the following additional terms shall be defined as provided below unless the context clearly requires a different meaning:

a. “Environmental or Safety Law(s)” means the Federal Water Pollution Control Act, the Clean Water Act, the Clean Air Act, the Resource Conservation and Recovery Act (“RCRA”), as amended by the Solid and Hazardous Waste Amendments of 1984, the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”), as amended by the Superfund Amendment and Reauthorization Act of 1986, the Toxic Substances Control Act (“TSCA”), the Occupational Safety and Health Act (“OSHA”), the Hazardous Materials Transportation Act, the Hazardous Materials Transportation Uniform Safety Act, the Oil Pollution Act of 1990, the Washington Water Pollution Control Act, the Clean Air Washington Act, the Washington Hazardous Waste Management Act (“HWMA”), the Washington Solid Waste Management laws, the Washington Model Toxics Control Act (“MTCA”), the Washington Underground Petroleum Storage Tanks Act, the Washington Industrial Safety and Health Act (“WISHA”), the Washington Worker and Community Right to Know Act, and the Washington Oil and Hazardous Substance Spill Prevention and Response Act, together with all regulations promulgated under any such authority and any and all other federal, state, regional, local or international statutes, regulations, rules, ordinances, orders, court or regulatory agency directives, permits, licenses, governmental authorizations and common law causes of action that apply to (1) any hazardous substance or material regulated or restricted under CERCLA, RCRA, TSCA, MTCA, or the HWMA; (2) any other pollutant, contaminant, or waste; (3) the health or safety of persons; or (4) the protection of the environment. “Environmental or Safety Law” includes past and future amendments and supplements.

b. “Hazardous Substances” shall mean any hazardous, toxic, or dangerous substance, waste, material, or other pollutant or contaminant that is regulated or subject to cleanup authority under any Environmental or Safety Law, including Existing Hazardous Substances.

c. “Existing Hazardous Substances” means any Hazardous Substances existing on, in, under or adjacent to the Public Rights-of-Way on the date of this Agreement, whether known or unknown.

d. “Remedial Work” shall mean as defined in subsection 9.3.7 below.

9.3.3 Restrictions on SMP Activities: Except as necessary for ordinary construction activities and in compliance with all applicable Environmental or Safety Laws, SMP and its employees, agents and contractors shall not cause Hazardous Substances to occur in, on or under the Public Rights-of-Way or the Monorail Transit Way, or permit the same to be used for the generation, production, manufacture,

refinement, transportation, treatment, storage, handling, disposal, transfer, release or processing of Hazardous Substances.

9.3.4 Compliance and Correction of Violations: With respect to the Monorail Transit Way, SMP shall comply, and shall guarantee compliance by all of its employees, agents and contractors, with all Environmental or Safety Laws at all times during the term of this Agreement. If SMP or any of SMP's employees, agents or contractors violates any applicable Environmental or Safety Law or any of the terms of this Agreement concerning the presence or use of Hazardous Substances or the handling or storing of Hazardous Substances, upon receipt of notice of such violation or the expiration of all challenges and appeals of such notice, whichever occurs later, SMP shall promptly take such action as is necessary to mitigate and correct the violation. If SMP does not act in a prudent and prompt manner, the City reserves the right, but not the obligation, upon reasonable prior notice to SMP, to act in place of SMP (for which purpose, only, SMP hereby appoints City as its agent), to come onto the Monorail Transit Way and to take such action as is necessary to ensure compliance or to mitigate the violation, all at SMP's sole cost and expense. In the event the City exercises the above right to take action, the City will consult with SMP regarding potential impacts on construction or operational activities, and will endeavor in good faith to avoid or minimize such impacts, except that the provisions in this sentence shall not apply in cases of Emergency or where necessary for City compliance with notices or orders issued or directed to the City by any authority with jurisdiction.

9.3.5 Environmental Testing: SMP shall have the authority and responsibility to undertake due diligence, all appropriate inquiry, and appropriate environmental testing within the Public Rights-of-Way as necessary for the construction and operation of the Project. SMP shall preserve the City's access to the Public Rights-of-Way consistent with construction and operation of the Project and shall provide access to the portions of the Project located within the Monorail Transit Way to conduct an environmental inspection at such reasonable time(s) as may be requested by City. In addition, SMP shall permit City access to portions of the Project located within the Monorail Transit Way at any time, upon reasonable notice, for the purpose of conducting environmental testing at the City's expense. In exercising the above rights of inspection and testing, the City will consult with SMP regarding any potential impacts on construction or operational activities, and will endeavor in good faith to avoid or minimize such impacts. SMP shall promptly inform SDOT of the existence of any environmental study, evaluation, investigation or results of any environmental testing conducted on the Public Rights-of-Way or the portions of the Project located within the Public Rights-of-Way whenever the same becomes known to SMP, and SMP shall provide a written copy of the same to SDOT as soon as reasonably possible and not later than thirty (30) days after the preparation of any such material by SMP or any of SMP's employees, agents, consultants or contractors.

9.3.6 Hazardous Substances Discovered During SMP Construction or Operations: Throughout the term of this Agreement, SMP shall bear all costs and expenses of Hazardous Substances management activities, including Remedial Work addressing Hazardous Substances, discovery of Existing Hazardous Substances or other

contamination in, on or under the Public Rights-of-Way, that result from or are necessitated by construction or operation of the Project, including utility relocations related to the Project. Prior to any construction in the Public Rights-of-Way, SMP shall develop a detailed protocol for Hazardous Substances management for review and approval by the City. The protocol will address issues such as: timing of any notice to the City, if required; responsibility for, content and timing of notice to the Washington Department of Ecology, where necessary; communication and coordination mechanisms between the City and SMP, including coordination regarding utilities; record-keeping requirements; preparation and distribution of reports, including progress reports and MTCA Independent Remedial Action reports; establishment of cleanup levels; worker health and safety; remedial contractor approval; responsibility for acquiring necessary permits; site access; measures for minimizing construction delay; work stoppage; and dispute resolution. Standard management protocols for different types of minor contamination and Remedial Work may also be established. Any sites posing a significant threat to human health and the environment will be addressed on a case by case basis, and may involve site-specific written agreements on Remedial Work between the City and SMP.

SMP shall, consistent with the protocol, undertake such investigation and remediation of Hazardous Substances contamination, including contamination existing outside of the limits of the Monorail Transit Facilities, both within the Public Rights-of-Way and adjacent to the Public Rights-of-Way, necessary to: address any order or written recommendation of the Washington Department of Ecology or other regulatory agency with jurisdiction; address disturbance of contamination due to construction of the Project and related utility relocations where additional Remedial Work is necessary to stabilize and control the site, including prevention of recontamination or adverse water quality impacts; or address situations where the Project construction or operation will make future Remedial Work more difficult or costly.

SMP shall ensure that all excavated Hazardous Substances are removed from the site or otherwise remediated to a cleanup standard consistent with applicable Environmental or Safety Laws, SDOT standard specifications, and SDOT policy and, when removed, are properly disposed of off site at an approved facility. SMP shall be identified as the generator for purposes of the disposal of all materials excavated in connection with the SMP Project. Excavated material with observed or detected Hazardous Substances may be not be used as backfill without the written approval of SDOT or as specifically provided in the approved protocol and only where use is in accordance with SDOT standard specifications and policies for clean fill.

SMP is responsible for obtaining all regulatory approvals for the Remedial Work after consultation with SDOT. No institutional controls shall be implemented relating to Public Rights-of-Way without the prior written consent of the City. No restrictive covenants shall be implemented relating to Public Rights-of-Way, except for use of SDOT's alternative notification system pursuant to WAC 173-340-440(8)(b). No monitoring wells or other remedial facilities shall be located within the Public Rights-of-Way without specific SDOT permit. SMP must provide for future monitoring, maintenance and removal of all monitoring wells or remedial facilities located within the

Public Rights-of-Way. SDOT may, at the City's sole option, notify SMP that a lesser degree of remediation fulfills SMP's remediation obligations stated herein. In the event that some Hazardous Substances will be left in place beneath any Monorail Transit Facilities located on or below the surface of the Public Rights-of-Way, SMP hereby agrees to indemnify the City for future Remedial Work and claims relating to those Hazardous Substances.

9.3.7 Remedial Work: As used in this subsection 9.3, the term "Remedial Work" means all activities which are performed by or on behalf of SMP or the City in connection with the discovery, identification, investigation, assessment, cleanup, removal, mitigation, monitoring or containment of Existing Hazardous Substances, including any Remedial Work that is ordered by any court or any other governmental agency or that is needed to meet the requirements of any Environmental or Safety Laws, including voluntary cleanups or remedial actions necessary for a No Further Action letter or other equivalent determination. "Remedial Work" includes work necessary to address Existing Hazardous Substances discovered during utility removals, relocations, replacements, or installations related to the Project. "Remedial Work" includes all activities reasonably necessary to prepare and review any written agreements on Remedial Work and/or to comply with any written agreements on Remedial Work and/or with cleanup standards under Environmental or Safety Laws, in connection with the presence, suspected presence, release or threatened or suspected release of an Existing Hazardous Substance in or into the air, soil, ground water, surface water or soil vapor at, on, or within the Public Rights-of-Way, including, but not limited to, the removal of any underground storage tank. The term "Remedial Work" includes the City's observing or monitoring of Remedial Work in compliance with any written agreement on Remedial Work and also includes negotiations with the Washington Department of Ecology or its employees or consultants relating to the activities described in this subsection 9.3 or the MTCA Independent Remedial Action Program, but does not include work performed by attorneys or employed staff of SMP or the City, other than the SDOT Environmental Manager (or his or her designee) or the SDOT Project Manager for Remedial Work, as those terms are defined in the approved protocol for Hazardous Substances management provided for in subsection 9.3.6, or City temporary employees not regularly assigned to the SMP Project.

9.3.8 Compliance with Laws: For all activities related to the Project, including Hazardous Substances management and Remedial Work, SMP is solely responsible for compliance with all applicable Environmental or Safety Laws. Nothing in this Agreement, including the City's receipt, review or approval of any request for authorization, data, record, report, or plan shall relieve SMP of any legal obligation, including but not limited to the obligation to provide a safe and healthful working environment or to comply with all Environmental or Safety Laws.

9.3.9 Dispute Resolution: The parties shall work together in good faith to resolve any disagreements regarding matters addressed in this subsection 9.3, including the extent or nature of Remedial Work at any particular location, in accordance with the process set forth in section 13, Dispute Resolution. The parties shall endeavor to resolve such disputes promptly, and in a manner that protects public and environmental

health and safety, recognizes Public Rights-of-Way management responsibilities, and minimizes delay of Project construction or interference with Project operations.

9.3.10 Removal of Hazardous Substances: In addition to all other requirements under this Agreement, SMP or SMP's contractor shall promptly remove or otherwise remediate in compliance with Environmental or Safety Laws any and all Hazardous Substances, released on, in or under the Public Rights-of-Way by SMP or any of its employees, agents or contractors during the term of this Agreement. Upon the expiration or termination of this Agreement, SMP shall remove from the Public Rights-of-Way all Hazardous Substances stored on site as a result of any activities by or for SMP. SMP shall demonstrate such removal and any remediation necessary for protection of human health and the environment to SDOT's reasonable satisfaction, which may include, but is not limited to, attaining MTCA cleanup levels and applying for and obtaining from the Washington Department of Ecology a final No Further Action (NFA) letter pursuant to the Independent Remedial Action Program. The NFA letter shall not be considered "final" for the purposes of this Agreement if the letter describes institutional controls or other conditions, unless the City has agreed in writing to such institutional controls or conditions in lieu of further remediation. SMP shall provide copies to the City of all records pertaining to remediation and disposal.

9.3.11 Reimbursement of City Costs: In addition to any remedy provided above the City shall be entitled to full reimbursement from SMP whenever City incurs any cost directly resulting from a violation by SMP or SMP's employees, agents or contractors of any Environmental or Safety Laws or of the terms of this subsection 9.3, including, but not limited to, the costs of any investigation, clean-up and other remedial actions; the fees of consultants, contractors, and attorneys; fines and penalties assessed directly against the City; and costs of injuries to third persons or other property due to environmental conditions.

9.3.12 Release and Indemnification: In addition to all other indemnification provided in this Agreement and consistent with the intent expressed in subsection 9.3.1 and notwithstanding the expiration or earlier termination of this Agreement, SMP shall release, defend, indemnify and hold the City free and harmless from any and all claims, causes of action, regulatory demands, liabilities, fines, penalties, losses, damages, consequential damages and expenses, including without limitation environmental cleanup or other remedial costs (and including the fees of consultants, contractors and attorneys, costs and all other reasonable litigation expenses when incurred and whether incurred in defense of actual litigation or in reasonable anticipation of litigation), whether made, commenced or incurred during the term of this Agreement or after the expiration or termination of this Agreement, resulting from SMP's construction or operation of the Project if arising out of any of the following: (i) the presence on, in or under the Public Rights-of-Way or Project during the term of this Agreement, or the migration from the Public Rights-of-Way or Project to other property or into the surrounding environment, of any Hazardous Substances other than a Hazardous Substance brought onto the Public Rights-of-Way or the Monorail Project solely by the City or by any of its employees, agents or contractors; (ii) SMP's breach of any provision of the Environmental Protection and Indemnification provisions of this

Agreement (subsection 9.3); (iii) the acts or omissions of SMP or any of SMP's employees, agents or contractors in remediating any environmental contamination discovered in preparation for or during any construction or operation undertaken by or for SMP; or (iv) any enforcement, cleanup, removal, remedial or other governmental or regulatory actions, agreements or orders made pursuant to Environmental or Safety Laws, together with any and all claims in law or equity made or suits by any party (including claims for indemnity, contribution, subrogation, and diminution in property value) against the City for damages, contribution, cost recovery, loss or injury, resulting from the SMP's construction or operation under this Agreement, including but not limited to, any claims against the City by SMP or any of its employees, agents, contractors or subcontractors based upon delay in construction or other activity resulting from Remedial Work or other environmental remediation activities conducted during the term of the Agreement. If a court of competent jurisdiction determines that the provisions of RCW 4.24.115 govern any application of this indemnification obligation, then, in situations of liability for damages arising out of bodily injury to persons or damage to property caused by or resulting from the concurrent negligence the City, including its agents and employees, and the SMP, including its agents and employees, the indemnification shall apply only to the extent of SMP's negligence. SMP further agrees to release the City from any and all claims, causes of action, liabilities and damages arising from the City's exercise of its right (or from the City's choice not to exercise its right) to undertake investigation or remediation of contamination existing in or adjacent to the Public Rights-of-Way.

9.3.13 Reservation of Rights. Except as provided in subsection 9.3.12 (Release and Indemnification), SMP and the City reserve the right to recover contribution for SMP's or the City's costs of Hazardous Substances management, including costs of Remedial Work, from other potentially liable persons or potentially responsible parties as those terms are defined under applicable Environmental or Safety Laws. SMP and the City agree that the parties, solely by reason of being public agencies holding Public Rights-of-Way or use authorizations, are not "owners or operators" for purposes of liability under any Environmental or Safety Laws, including, but not limited to, private rights of action for contribution under MTCA.

SECTION 10. INSURANCE

10.1 Required Coverages and Conditions.

10.1.1 Liability Insurance. SMP shall maintain, or cause to be maintained, except as provided herein, throughout the term of this Agreement and for five (5) years after its termination, insurance adequate to protect the City against claims or losses that may arise as a result of the design, construction, testing, operation, maintenance or dismantling of the Monorail Transit System in the Monorail Transit Way, as provided in this section 10, provided that the City's Director of Risk Management and SMP may mutually agree upon changes to the limits, type and insurer qualifications. Unless otherwise agreed by the parties, SMP shall obtain:

(i) Commercial general liability insurance, including coverage for employer's liability/stop gap insurance and the perils of explosion, collapse, underground property damage, subsidence and earth movement, with a minimum primary limit of liability of not less than \$1,000,000 each occurrence with a separate annual aggregate to apply;

(ii) Business automobile liability insurance, including coverage for owned, non-owned, hired, and leased vehicles with a minimum primary limit of liability of \$1,000,000 each occurrence;

(iii) Excess or umbrella liability insurance excess of underlying commercial general liability and business automobile liability insurance limits so as to provide total limits of liability of \$149,000,000 each occurrence with a separate annual aggregate to apply;

(iv) During the period of design and construction and for five years after completion of construction of the Monorail Transit System, project professional liability insurance with limits of \$50 million covering errors of professional consultants, including but not limited to architectural and engineering consultants of all tiers; and

(v) Workers' Compensation insurance in the State of Washington covering liability for industrial injury to SMP employees or those of any SMP contractor, vendor or consultant in accordance with the provisions of Title 51 of the Revised Code of Washington. SMP contractors, vendors or consultants shall be responsible for Workers' Compensation Insurance for any subcontractor, subvendor or subconsultant of any tier that provides services under an agreement with SMP. If the agreement requires working on or around a navigable waterway, United States Longshoremen's and Harbor Workers' (USL&H) coverage and contingent coverage for Jones Act (Marine Employers Liability) shall be maintained in compliance with federal statutes.

10.2 Builder's Risk Insurance. During the period of construction on the West Seattle High-Rise Bridge, SMP shall maintain, or cause to be maintained, builder's risk property insurance on an "all risks" of direct physical loss or damage, including the perils of earth movement, flood and certified acts of terrorism. The policy shall provide coverage per occurrence up to the probable maximum loss of the covered property, which shall include the West Seattle High-Rise Bridge. The SMP or its DBOM Contractor's insurance underwriter shall perform the probable maximum loss analysis using standard underwriting practices, subject to review and concurrence by the Director of the Seattle Department of Transportation. The City shall be included as a loss payee as the City's interest may appear. The City shall be provided an insurer's waiver of subrogation.

10.3 Qualifications of Insurers and Self-Insurers. Insurers licensed in the State of Washington shall maintain minimum A.M. Best's ratings of A-:VII and unauthorized insurers shall meet the requirements of Chapter 48.15 RCW; other types of risk financing mechanisms shall be subject to the City's approval, which shall not be

unreasonably withheld. In the event that any coverage required hereunder is provided under a Self-Insured Retention (“SIR”), the entity responsible for the SIR shall have an authorized representative issue a letter stating that it shall protect the City to the same extent as if a commercial insurer provided coverage for the City as an additional insured.

10.4 Documentation of Insurance, Notice of Cancellation. For all coverage provided for in this Agreement, SMP shall file with the City’s Director of Risk Management certificates of insurance and copies of policies reflecting evidence of the required insurance. The City shall be named as an additional insured on the policies for commercial general and business automobile liability insurance and excess or umbrella liability, as the City’s interest may appear. The certificates shall contain a provision that coverage will not be canceled without at least 30 days’ prior written notice to the City.

10.5 Remedies for Failure to Maintain Insurance. If SMP fails to maintain the required insurance, the City may order SMP to stop constructing, testing or operating the Monorail Transit System in the Monorail Transit Way until the required insurance is obtained.

10.6 Adjustments to Insurance. The parties agree that at least once every five years they shall review and revise insurance provisions of section 10 to reflect the impact of inflation and other changes in the insurance marketplace.

SECTION 11. LIENS

11.1 In the event that any City property becomes subject to any claims for mechanics’, artisans’ or materialmen’s liens, or other encumbrances chargeable to or through SMP which SMP does not contest in good faith, SMP shall promptly, and in any event within thirty (30) days, cause such lien claim or encumbrance to be discharged or released of record (by payment, posting of bond, court deposit or other means), without cost to the City, and shall indemnify the City against all costs and expenses (including attorneys’ fees) incurred in discharging and releasing such claim of lien or encumbrance. If any such claim or encumbrance is not so discharged and released, the City may pay or secure the release or discharge thereof at the expense of SMP after first giving SMP five (5) business days’ advance notice of its intention to do so. The City shall use its reasonable best efforts to keep SMP’s facilities free of all liens that may adversely affect the Monorail Transit System.

11.2 Nothing herein shall preclude SMP’s or the City’s contest of a claim for lien or other encumbrance chargeable to or through SMP or the City, or of a contract or action upon which the same arose.

11.3 Nothing in this Agreement shall be deemed to give, and the City hereby expressly waives, any claim of ownership in and to any part or the whole of the Monorail Transit Facilities except as may be otherwise provided herein.

SECTION 12. TERM; TERMINATION

12.1 This Agreement shall be effective as of the date the last party signs and, unless sooner terminated pursuant to the terms hereof, shall remain in effect for so long as the Monorail Transit Way is used by SMP for public transportation purposes.

12.2 Upon termination of this Agreement, SMP agrees to prepare, execute and deliver to the City all documentation necessary to evidence termination of this Agreement or portion thereof so terminated. No such termination, however, shall relieve the parties hereto of obligations accrued and unsatisfied at such termination.

12.3 Termination after Completion of Construction. If SMP ceases to use any or all of the Monorail Transit Way for the Monorail Transit System without reasonable cause and the cessation continues for at least six (6) consecutive months without the SMP taking reasonable steps to resume operation, then, to the extent any portion of the Monorail Transit System remaining in the Public Rights-of-Way or on any other City property is not removed by SMP, the City, by ordinance, may declare it abandoned and it shall become the property of the City subject to applicable law. If the City determines not to exercise its right to take ownership, the City may after notice to SMP, require SMP to remove said remaining portion of the Monorail Transit System, subject to City approval of a removal plan or plans. SMP agrees to continue to exercise its taxing authority to the extent necessary to allow the City to effectuate such remedies and other remaining obligations under this Agreement, including, but not limited to, repayment of all obligations to bondholders and creditors. Reasonable cause for the purposes of this section 12 includes without limitation, acts of God; strikes; civil disturbances; earthquakes; and similar events outside the control of the SMP.

12.4 Termination Prior to Completion of Construction. If, without reasonable cause, SMP is unable to complete construction of the Monorail Transit System, SMP shall be provided additional time as agreed by the parties to complete construction of the Monorail Transit System within a reasonable time, which shall include any time needed to pursue remedies against the DBOM Contractor and sureties. If after the additional time has passed, the SMP is unable to complete construction within a reasonable time, the City may, after notice to SMP and in its sole discretion, choose to exercise either of the remedies provided in subsection 12.3 above, subject to applicable law. SMP agrees to continue to exercise its taxing authority to the extent necessary to allow the City to effectuate such remedies and other remaining obligations under this Agreement, including, but not limited to, repayment of all obligations to bondholders and creditors.

12.5 Outside Attorney's Opinion. Within thirty (30) days after execution of this Agreement, SMP shall provide to the City an opinion letter from SMP's outside attorney, addressed to the City, stating that, in the opinion of the outside attorney, SMP has the legal authority to exercise and continue to exercise its taxing authority to fund SMP's obligations under this Agreement.

12.6 Order to Remove. Any order by the City issued pursuant to this section 12 to remove the Monorail Transit System in whole or in part shall be sent by registered or

certified mail to SMP not later than twenty-four (24) months following the date of termination of this Agreement, or, if later, the final resolution of any appeal of the termination.

12.7 Removal and Restoration Plan. SMP shall file a written removal and restoration plan with the City not later than sixty (60) calendar days following the date of the receipt of any orders directing removal, or any consent to removal, describing the work that will be performed, the manner in which it will be performed, and a schedule for removal by location. The removal plan shall be subject to approval and regulation by the City. The affected Public Rights-of-Way and other City property shall be restored to a condition at least as good as prior to construction or partial construction of the Monorail Transit System.

12.8 Removal Bond. Within 60 days of the execution of the design-build-equip contract between SMP and its DBOM Contractor, SMP shall provide evidence satisfactory to the City's Director of Transportation that the performance and payment bonds provided by the DBOM Contractor, as referenced in subsection 9.1.6, can be used to satisfy SMP's obligations under subsections 12.4 and 12.7 of this Agreement. If SMP does not provide such satisfactory evidence, SMP shall deliver to the Director of Transportation for filing with the City Clerk a bond in the penal sum of Fifty-Four Million Dollars (\$54,000,000) to reflect the reasonable cost of removal and restoration, naming the City as an obligee and conditioned that SMP shall remove the Monorail Transit System or portion thereof and restore the Public Rights-of-Way and other property to a condition at least as good as existed immediately prior to construction of the Monorail Transit System, in accordance with a removal order issued by the City, pursuant to section 12 of this Agreement. SMP shall maintain such a bond in full force and effect until one year after commencement of revenue service for the entire Monorail Transit System. Such bond shall be executed by a surety company authorized and licensed to do business in the State of Washington; listed on the Department of the Treasury's Listing of Approved Sureties (Department Circular 570); and subject to the underwriting limitation published therein on a per bond basis or written with a penal sum over the underwriting limitation as long as the excess amount is protected with reinsurance, coinsurance or other methods as specified at 31 CFR 223.10-11.

12.9 Notwithstanding any other terms or provisions in this Agreement or in any approval or permit issued pursuant to this Agreement, the City shall not be liable for any damages or equitable remedies under this Agreement in connection with any act or omission by the City related to City of Seattle Initiative Measure No. 83 or any other initiative that purports to revoke or invalidate all or any part of this Agreement. Nothing in this paragraph shall be deemed a statement or admission by either party regarding the validity (under any legal theory including, but not limited to, impairment of contract) of City of Seattle Initiative Measure No. 83 or any other initiative that purports to revoke or invalidate all or any part of this Agreement. The City acknowledges that the SMP intends to rely on this Agreement to implement the Project and that the SMP will be entering into additional contracts to implement the Project.

SECTION 13. DISPUTE RESOLUTION

13.1 In the event that the parties' Designated Representatives cannot resolve a disagreement arising under or in connection with this Agreement, the parties shall follow the dispute resolution steps set forth below.

13.1.1 A party's Designated Representative shall notify the other party's Designated Representative in writing of any problem or dispute that a party believes needs resolution. The written notice shall include (a) a description of the issue to be resolved; (b) a description of the differences between the parties on the issue; and (c) a summary of any steps taken to resolve the issue.

13.1.2 Upon receipt of a written notice of request for dispute resolution, under this subsection 13.1, the following officials shall meet within five (5) business days and attempt to resolve the dispute: for the City, its Director of Transportation; for SMP, its Director of Construction if the dispute relates to construction, or its Director of Operations if the dispute relates to operations.

13.2 The City and SMP shall make good faith efforts to resolve any dispute arising under or in connection with this Agreement by using the dispute resolution process described in subsections 13.1.1 through 13.1.2 above. If the disputed issue has not been resolved at the conclusion of the process, a party may initiate non-binding mediation of the dispute. Within ten (10) days of receiving written notice of initiation of non-binding mediation by one or both parties, each party shall designate in writing not more than five (5) candidates it proposes to act as a non-binding mediator. The parties shall within an additional five (5) days select one of the mediators from either list to serve as mediator. Should the parties be unable to agree upon a mediator, a mediator shall be chosen from one of the two lists by the presiding judge of the King County Superior Court at Seattle. Upon selection of the mediator, the parties shall use reasonable efforts to resolve the dispute within thirty (30) days with the assistance of the mediator. The cost of mediation shall be shared by Seattle and SMP equally, except that each party shall be responsible for its own attorney's fees and other costs incurred solely for its own benefit.

13.2.1 If mediation fails to resolve the dispute within thirty (30) days of selection of the mediator, the parties may thereafter seek redress in court.

13.2.2 Pending the decision in any mediation or litigation process pursuant to this section 13, the parties to such process shall continue to fulfill their respective duties under this Agreement.

SECTION 14. REMEDIES; ENFORCEMENT

14.1 Remedies. The City has the right to exercise any and all of the following remedies, singly or in combination, in the event SMP violates any provision of this Agreement:

- A. Commencing an action at law for monetary damages;
- B. Commencing an action for equitable or other relief;

C. Seeking specific performance of any provision that reasonably lends itself to such remedy.

14.2 Cumulative Remedies. In determining which remedy or remedies for SMP's violation are appropriate, a court may take into consideration the nature and extent of the violation, the remedy needed to prevent such violations in the future, whether SMP has a history of previous violations of the same or similar kind, and such other considerations as are appropriate under the circumstances. Remedies are cumulative; the exercise of one shall not foreclose the exercise of others.

14.3 Failure to Enforce. SMP shall not be relieved of any of its obligations to comply promptly with any provision of this Agreement by reason of any failure of the City to enforce prompt compliance, and the City's failure to enforce shall not constitute a waiver of rights or acquiescence in SMP's conduct.

SECTION 15. COVENANTS AND WARRANTIES

15.1 By execution of this Agreement, the City warrants:

A. That the City has the full right and authority to enter into and perform this Agreement and any permits which may be granted in accordance with the terms hereof, and that by entering into or performing this Agreement the City is not in violation of its charter or by-laws, or any law, regulation or agreement by which it is bound or to which it is bound or to which it is subject; it being understood, however, that the covenant and warranty contained in this section 15 does not constitute a warranty, expressed or implied, by the City, of the right or rights granted by the City to SMP hereunder; and

B. That the execution, delivery and performance of this Agreement by the City has been duly authorized by all requisite City action, that the signatories for the City hereto are authorized to sign this Agreement, and that, upon approval by the City, the joinder or consent of any other party, including a court or trustee or referee, is not necessary to make valid and effective the execution, delivery and performance of this Agreement.

15.2 By execution of this Agreement, SMP warrants:

A. That SMP has full right and authority to enter into and perform this Agreement in accordance with the terms hereof, and by entering into or performing under this Agreement, SMP is not in violation of any of its agency governance rules, any law, regulation or agreement by which it is bound or to which it is bound or to which it is subject; and

B. That the execution, delivery and performance of this Agreement by SMP has been duly authorized by all requisite Board action, that the signatories for SMP hereto are authorized to sign this Agreement, and that the joinder or consent of any other party, including a court or trustee or referee, is not necessary to make valid and effective the execution, delivery and performance of this Agreement.

SECTION 16. RECORDINGS, TAXES AND OTHER CHARGES

16.1 SMP shall pay all transfer taxes, documentary stamps, recording costs or fees, or any similar expense in connection with the recording or filing of any permits that may be granted hereunder. SMP further agrees that if it is determined by any federal, state or local governmental authority that the sale, acquisition, license, grant, transfer or disposition of any part or portion of the Monorail Transit Facilities or rights herein described requires the payment of any tax, levy, excise, assessment, or charges (including, without limitation, property, sales or use tax) under any statute, regulation or rule, SMP shall pay the same, plus any penalty and/or interest thereon, directly to said taxing authority and shall hold the City harmless therefrom. SMP shall pay all taxes, levies, excises, assessments or charges, including any penalties and/or interest thereon, levied or assessed on the Monorail Transit Facilities, or on account of their existence or use (including increases thereof attributable to such existence or use, and excluding taxes based on the income of the City), and shall indemnify the City against payment thereof. SMP shall have the right to claim, and the City shall reasonably cooperate with SMP in the prosecution of any such claim, for refund, rebate, reduction or abatement of such tax(es).

16.2 The City may pay any tax, levy, excise, assessment or charge, plus any penalty and/or interest thereon, imposed upon SMP for which SMP is obligated pursuant to this section 16, if SMP does not pay such tax, levy, excise, assessment, or charge when due. SMP shall reimburse the City for any such payment made pursuant to the previous sentence, plus interest at the prime rate per annum, as published in the Wall Street Journal.

SECTION 17. ASSIGNABILITY; BENEFICIARY

17.1 This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors or assignees. No assignment hereof or sublease shall be valid for any purpose without the prior written consent of the other party, and any attempt by one party to assign or license the rights or obligations hereunder without prior written consent will give the other party the right, at its written election, immediately to terminate this Agreement or take any other lesser action with respect thereto. The above requirement for consent shall not apply to (i) any disposition of all or substantially all of the assets of a party; (ii) any governmental entity merger, consolidation or reorganization, whether voluntary or involuntary; (iii) a sublease or assignment of this Agreement (in whole or in part) to a governmental entity; or (iv) a sale, lease, or other conveyance by the City, subject to those requirements set forth in this Agreement; provided however, that no sublease or assignment under (iii) shall be permitted to a governmental entity not operating, constructing or maintaining a Monorail Transit System on behalf of SMP; and provided further, that no unconsented assignment shall relieve SMP of its obligations and liabilities under this Agreement.

17.2 Either party hereto may assign any monetary receivables due it under this Agreement; provided, however, such assignment shall not relieve the assignor of any of its rights or obligations under this Agreement.

17.3 SMP acknowledges and agrees that the City may designate, in writing, a designee to (i) receive information (including information designated or identified as confidential) and notices under this Agreement, and (ii) provide certain approvals or consents required from the City under this Agreement. In the event of such designation, SMP may rely on approvals or consents by such designee on behalf of the City as fully as if such actions were performed by the designator itself.

17.4 Neither this Agreement nor any term or provision hereof, or any inclusion by reference, shall be construed as being for the benefit of any party not a signatory hereto.

SECTION 18. NOTICES

18.1 Unless otherwise provided herein, all notices and communications concerning this Agreement shall be in writing and addressed to (one copy each):

Seattle Popular Monorail Authority
Attention: Executive Director
1904 Third Avenue, Suite 105
Seattle, WA 98101

And to:

The City of Seattle
Attention: Director of Transportation
700 5th Avenue, Suite 3900
P.O. Box 34996
Seattle, WA 98124-4996

or at such other addresses as may be designated in writing by either party.

18.2 Unless otherwise provided herein, notices shall be sent by registered or certified U.S. Mail, or other verifiable physical or electronic transmission, and shall be deemed served or delivered to addressee, or its office, upon the date of actual receipt, return receipt acknowledgment, or, if postal claim notice is given, on the date of its return marked "unclaimed"; provided, however, that upon receipt of a returned notice marked "unclaimed," the sending party shall make reasonable effort to contact and notify the other party by telephone.

SECTION 19. MISCELLANEOUS

19.1 This Agreement shall survive issuance of each permit that may be granted hereunder.

19.2 Each party shall be responsible for its own costs, including legal fees, incurred in negotiating or finalizing this Agreement, unless otherwise agreed by the parties.

19.3 SMP shall make any and all payments to the City in accordance with the requirements for the applicable payment. If a due date for any payment is not specified in the applicable provision of this Agreement, then that payment shall be made by SMP within thirty (30) days after the City's request for payment is received by SMP. If SMP fails to make any payment when due, that payment shall, in accordance with RCW 39.76.011(1), accrue interest at the rate of one percent (1%) per month until paid.

19.4 Each party shall ensure that its employees, agents and contractors comply with the obligations of this Agreement.

19.5 SMP shall not be deemed in default with provisions of this Agreement where performance was rendered impossible by war or riots, civil disturbances, floods or other natural catastrophes beyond SMP's control; the unforeseeable unavailability of labor or materials; labor stoppages or slow downs or power outages exceeding back-up power supplies. This Agreement shall not be terminated or SMP penalized for such noncompliance, provided that SMP takes immediate and diligent steps to bring itself back into compliance and to comply as soon as practicable under the circumstances without unduly endangering the health, safety, and integrity of SMP's employees or property, or the health, safety, and integrity of the public, Public Rights-of-Way, public property, or private property.

19.6 This Agreement may be amended only by a written instrument, authorized by the City Council and SMP Board, and executed by each of the parties hereto.

19.7 No failure to exercise and no delay in exercising, on the part of any party hereto, any rights, power or privilege hereunder shall operate as a waiver hereof, except as expressly provided herein.

19.8 This Agreement constitutes the entire agreement of the parties with respect to the subject matters hereof, and supersedes any and all prior negotiations (oral and written) and understandings with respect hereto.

19.9 Section and subsection headings are intended as information only, and shall not be construed with the substance of the section or subsection they caption.

19.10 All exhibits are by this reference incorporated into this Agreement.

19.11 This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all counterparts together shall constitute but one and the same instrument.

SECTION 20. LEGAL FORUM

This Agreement shall be interpreted, construed and enforced in accordance with the laws of the State of Washington. Venue for any action under this Agreement shall be King County, Washington.

SECTION 21. INTERPRETATION

This Agreement is executed by all parties under current interpretations of applicable federal, state or local statute, ordinance, law or regulation.

SECTION 22. SEVERABILITY

22.1 In case any term of this Agreement shall be held invalid, illegal or unenforceable in whole or in part, neither the validity of the remaining part of such term nor the validity of the remaining terms of this Agreement shall in any way be affected thereby.

22.2 Notwithstanding the foregoing, the material provisions of this Agreement are not severable. In the event that a court, agency or legislature of competent jurisdiction acts or declares any nonmaterial provision of this Agreement to be unenforceable according to its terms, or otherwise void, said provision shall be considered a separate, distinct, and independent part of this Agreement, and such holding shall not affect the validity and enforceability of all other provisions hereof. In the event that a court, agency or legislature of competent jurisdiction acts so that, or declares that, any material provision of this Agreement is unenforceable according to its terms, or is otherwise void, the City and SMP agree to immediately enter into negotiations in good faith to restore the relative burdens and benefits of this Agreement, consistent with applicable law. If the City and SMP are unable to agree to a modification of this Agreement within sixty (60) days, the parties shall resolve their disagreement in accordance with section 13, Dispute Resolution.

22.3 Notwithstanding the foregoing, if either SMP or the City believes a provision is not material, it must commence an action challenging the materiality within fourteen (14) days of a request by the other that it enter into negotiations. The obligation to negotiate is not tolled, and the City and SMP must discharge their negotiation responsibility notwithstanding the dispute as to materiality. If there is a dispute as to materiality, the remedies provided for in the preceding paragraph shall be cumulative, not alternative. The remedies provided for herein do not prevent the City or SMP from contending that a particular provision is enforceable, or foreclose any remedies if a provision is enforceable.

IN WITNESS WHEREOF, each of the parties hereto has executed this Agreement by having its authorized representative affix his/her name in the appropriate space below:

**SEATTLE POPULAR MONORAIL
AUTHORITY (SMP)**

THE CITY OF SEATTLE

By: _____
Signature

By: _____
Signature

Print or type name

Print or type name

Date: _____

Date: _____

Approved as to form:

Authorized by Ordinance _____

By: _____

Print or type name
Legal Counsel

Exhibit A: Not Used

Exhibit B: Not Used

EXHIBIT C

Exhibit C:

Additional Conditions of Grant of Non-Exclusive Use

1. SMP implementation of and compliance with the Mitigation Program described in the Green Line Final Environmental Impact Statement, (Seattle Monorail Project and U.S. Coast Guard, March, 2004), incorporated herein by reference. The Program includes, but is not limited to, construction mitigation and impacts to transportation, historic and cultural resources, water quality, and other areas of the environment as the Green Line is designed, constructed and operated.
2. SMP implementation of and compliance with the Memorandum of Agreement between the Seattle Monorail Project and U.S. Coast Guard, the State of Washington Historic Preservation Officer, and the City of Seattle Historic Preservation Officer. The Memorandum of Agreement will provide mitigation for adverse effects to historic and cultural resources located along the Green Line.
3. SMP or its DBOM Contractor shall do the following to assist businesses impacted by the construction of the Green Line:
 - a) Develop and implement a public relations plan that will provide that residents and businesses are kept fully informed about potentially significant disruptions, such as temporary street closures, changes in transit service, and parking availability;
 - b) Develop a 24 hour monitoring center that provides telephone access for the public to get construction information and to make complaint and incidental reports;
 - c) Develop a multi-media public information program to provide information regarding street closures, hours of construction, business access, and parking impacts;
 - d) Provide staff to serve as a community ombudsman;
 - e) Maintain access to businesses during construction activities;
 - f) Develop a marketing and business assistance program to mitigate the construction impacts of the Green Line. The program would provide assistance such as low-interest working capital loans, including incentives to renew leases and remain along the Green Line during construction, to support the loss of revenue experienced during construction, and technical assistance with marketing, accounting, general management, and finance. For the purposes of this section, business owners include those who own or lease property;

- g) Coordinate street sweeping services in construction areas with construction activity, particularly areas with surrounding residential and retail development;
 - h) Post advance notice signs prior to construction in areas where surface construction activities will affect access to surrounding businesses;
 - i) Implement the business assistance program set forth in Appendix C of the Memorandum of Agreement referenced in section 2 above;
 - j) Distribute to all businesses information packets containing construction details such as special construction activities, timelines, and contact names and phone numbers.
4. Design excellence is paramount throughout the system, including the guideway, columns, switches, bents, and other system elements, as well as related access improvements adjacent to the system as described in subsection 4.e) below. Design excellence and quality access will be of benefit to all neighborhoods in the system, to ridership levels, and to the overall success of the project. Therefore, it is the City's intent that SMP will commit resources to enable quality design and access to the system, consistent with the City's adopted Monorail Transit System Design Guidelines, as interpreted by the Monorail Review Panel. Design excellence shall emphasize the design and materials for bridge spans, guideway columns, switches, bents, other guideway structures, and other system elements to create the appearance of less mass, including bents, columns and guideways that are more slender in appearance.

In order to balance the City's intent to help ensure design excellence and support monorail project cost containment with the goal of integrating the monorail into the overall transportation system, neighborhoods, and the urban environment, SMP will complete the following monorail station access improvements. Adherence to this section shall not preclude the City's ability to condition the project under the City's SEPA authority or consistent with the Seattle Municipal Code provisions. Improvements shall include:

- a) Improvements to facilitate pedestrian access to the Elliott/Mercer Monorail Station from Uptown/Seattle Center Urban Center neighborhood, such as an elevated pedestrian connection to the station fare-paid zone, or other pedestrian improvements approved in a Master Use Permit.
- b) Improvements to at-grade connections between the 5th & Stewart monorail station and Westlake Center.

- c) An elevated walkway between the King/Weller monorail station and the existing Weller Street Pedestrian Bridge, if permitted by any required third-party approvals.
- d) At-grade improvements at the Delridge station area to provide enhanced safety and security. These will include lighting, CCTV monitoring integrated into the Green Line CCTV security system, or alternatives that may be approved in a Master Use Permit.
- e) Improvements to major pedestrian routes as identified in Table 1, including reasonable enhancements to existing sidewalks and paths, pedestrian safety facilities (such as crosswalks and retiming of signals), and streetscape elements (such as lighting, landscape and urban design elements) to be proposed by SMP in permit applications and specified by the City in Project Construction Permits.
- f) SMP shall provide or cause to be provided grade-separated pedestrian access to the west side of the BNSF railroad tracks for any station in the vicinity of Safeco Field and Qwest Stadium and Exhibition Hall.

Final construction permits for the station in the vicinity of Safeco Field and Qwest Field and Exhibition Hall shall not be issued by the City until execution of a multi-party agreement to fund construction of a shared use, grade-separated, public, pedestrian crossing that fully implements the prior legal obligations, if any, of the PFD and First and Goal and includes the necessary real property approvals of the BNSF and WSDOT should their properties be affected.

- g) The City and SMP agree that a station on 2nd Avenue between Madison and Spring streets is an important element of the monorail system in the downtown core. Toward that end, the City is committed, excluding financial assistance, to helping the monorail secure the necessary property rights for this station. The station at this location is considered part of the entire Green Line with respect to subsection 3.1.1.A of this Agreement and SMP with the City's assistance shall use its best efforts to secure such rights. The funds allocated to the right-of-way acquisition, and design and construction of this station shall be reserved by the SMP until such time as the property becomes available, even if after the completion of the initial Green Line.

If at some future date the SMP and the City of Seattle mutually determine that the station cannot be built at the proposed location, the two parties shall determine other pedestrian access improvements to other Green Line stations in downtown Seattle, to/from both the ferry terminal and business/residences in the general vicinity of this station, to be implemented by SMP up to the budgeted costs of station construction.

5. In order to balance the City's intent to help ensure design excellence and support monorail project cost containment with the goal of integrating the monorail into the overall transportation system, neighborhoods, and the urban environment, SMP will complete the item set forth below within 3 years after project construction is completed.
 - a) Spot improvements to major pedestrian routes as identified in Table 2, including enhancements such as wayfinding and other spot improvements to existing sidewalks and paths, pedestrian safety facilities (such as crosswalks and retiming of signals), and streetscape elements (such as lighting, landscape and urban design elements).
6. The priorities below represent the City's and SMP's priorities as of the date of this Agreement. SMP will dedicate \$5 million to pursue transit oriented development and community development partnerships for the items set forth below, to be completed within 5 years after project construction is completed. Because areas adjacent to but outside the perimeter of the monorail system may change over time, at the time of implementation, the City and SMP will jointly determine whether the improvements listed below continue to be a priority for integrating the monorail in the overall transportation system and urban environment. The City and SMP may adjust this set of priorities as needs arise by mutual agreement.
 - a) Associated development of the parcel or parcels at the southwest corner of NW 85th Street and 15th Avenue NW.
 - b) Associated development of the parcel or parcels south of the monorail station on the block between Virginia and Stewart streets on 5th Avenue, including an entry and connections to a station fare-paid zone.
 - c) Improvements to Westlake Center and the Westlake Station of the Downtown Seattle Transit Tunnel to facilitate transfers between light rail and monorail transit.
 - d) Associated development of the unused portion of the parcel bounded by 2nd Avenue, James Street and Yesler Way (a.k.a., "Sinking Ship Garage").
 - e) Improvements to King Street Station, 4th Avenue South, the International District station of the Downtown Seattle Transit Tunnel, and/or the North Kingdome Parking Lot to facilitate transfers between monorail transit and various other modes of transportation.
 - f) Associated development of parcels on the block of California Avenue SW bounded by SW Alaska and SW Edmunds, including an entry and connections to a station fare-paid zone.

7. SMP and SDOT shall enter into an agreement for a tree replacement plan that is consistent with the principle of no net loss of tree canopy due to monorail construction.
8. The City supports SMP's intent to design, construct, and operate the Monorail Transit System in a manner that maximizes accessibility and independence for all passengers. To that end, SMP will develop a disability access plan for the Green Line system. To assist in the development of the plan, SMP will form a community advisory committee on disability access that will meet regularly and advise the SMP, and its disability access consultant on accessibility issues related to design, construction, and ongoing operations. To the extent possible, SMP will implement the recommendations of the committee. The disability access advisory committee will report its final recommendations to the SMP Board prior to implementation of the accessibility plan.
9. SMP shall pay, or reimburse King County Metro for, the costs associated with any temporary or permanent relocation or protection of King County Metro Transit's electric trolley bus infrastructure that is necessitated by the construction or operation of the Monorail Transit System.
10.
 - a) SMP will conduct an on-street parking inventory around stations at Crown Hill, NW 65th NW Market, Dravus, Delridge, Avalon, Alaska Junction, and Morgan Junction within the year preceding each station opening. SMP and the City will agree on a study methodology.
 - b) Based on the study results, SMP and City staff will work with affected neighborhoods in the station study areas to identify and implement appropriate mitigation elements prior to the station openings. These controls may include parking meters; time-limit signs; passenger, truck, and load/unload zones; and Residential Parking Zones (RPZs) up to ¼ miles around each identified station. City and SMP staff will attend community meetings to present proposals and document support for various parking controls. Support for RPZs may be documented by surveys or other appropriate community outreach efforts to adjacent tenants/residents and property owners conducted by SMP, with City assistance.
 - c) The City will monitor all parking controls, including any RPZs, during the first two years after the entire Green Line opens. If RPZ boundaries or other on-street controls adjacent to stations are insufficient, City staff will work with the affected neighborhoods to adjust as necessary. SMP will participate with the City in these discussions with neighborhoods. SMP will be responsible for funding any expansions of parking controls as described below.

- d) SMP will fund the following mitigation elements:
- 1) Parking inventory studies around each identified station;
 - 2) Appropriate parking controls as determined by the City, SMP, and neighborhoods, including permit costs, labor, and all other related installation costs;
 - 3) Any newly-created RPZs, expansions of existing RPZs where the need for the expansion is due to the monorail, or other parking controls during the first two years of Green Line operations, including all costs for signs, labor and other related installation items; and
 - 4) Public education and marketing campaigns related to hide-and-ride parking and access to the monorail stations to be incorporated into SMP's community relations program.

Nothing in this Exhibit limits the City's ability to impose reasonable conditions on land use and street use permits, consistent with the City's policies and authority under the State Environmental Policy Act (SEPA) and consistent with Seattle Municipal Code provisions, including those pertaining to review and approval of Monorail Transit Facilities, Section 15.54.020 and Chapter 23.80, Essential Public Facilities. Conditions imposed upon land use and street use permits pursuant to the City's SEPA authority shall be reasonable and capable of being accomplished, and shall be imposed only to mitigate adverse environmental impacts identified in the environmental documents prepared for the Project. Exercise of SEPA authority by SDOT or DPD shall not require an amendment to this Agreement.

Exhibit C-Table 1

Station	Major Pedestrian Route
85th	NW 85th Street: 21st Avenue NW to 12th Avenue NW
	15th Avenue NW: Holman Rd NW to NW 75 th Street
	Holman Rd NW: NW 90th Street to 15th Avenue NW
	Mary Avenue NW: NW 87 th Street to NW 85 th Street
65th	NW 65th Street: 20th Avenue NW to 11th Avenue NW
	15th Avenue NW: NW 75th Street to NW 60th Street
Market	NW Market Street: 20th Avenue NW to 11th Avenue NW
	15th Avenue NW: NW 60th Street to NW 51st Street
Dravus	W Dravus Street: 21st Avenue W to 12th Avenue W
	16th Avenue W: W Barrett Street to W Dravus Street
	16th Avenue W/Thorndyke Avenue W: W Dravus Street to BNSF Franchise
Elliott/Mercer	W Mercer Street: Elliott Avenue W to 2nd Avenue W
	Elliott Avenue W: W Mercer St to 4th Avenue W
	W Harrison Street: 3rd Avenue W to Elliott Avenue W
Key Arena	W Harrison Street: 3rd Avenue W to 1st Avenue N
	Warren Avenue N: Mercer Street to Republican Street
Delridge	SW Spokane Street: Delridge Way SW to 26 th Ave SW
	Delridge Pedestrian Path: Delridge station to Delridge Way SW
	Delridge Way SW: Delridge Pedestrian Path to SW Andover St
	SW Avalon Way: SW Spokane Street to SW Yancy Street

Exhibit C-Table 1

Station	Major Pedestrian Route
Avalon	35th Avenue SW: SW Dakota Street to SW Alaska Street
	SW Avalon Way: SW Yancy Street to Fauntleroy Way SW
	SW Oregon Street: 35th Avenue SW to Fauntleroy Way SW
	- or -
	SW Snoqualmie Street: 35th Avenue SW to 37th Avenue SW
	SW Alaska Street: 35th Avenue SW to Fauntleroy Way SW
Alaska Junction	California Avenue SW: SW Oregon Street to SW Brandon Street
	42 nd Avenue SW: SW Oregon Street to SW Edmunds Street
	SW Alaska Street: Fauntleroy Way SW to 44 th Avenue SW
Morgan Junction	California Avenue SW: SW Brandon Street to SW Raymond Street
	Fauntleroy Way SW: 41st Avenue SW to Holly Place SW
	SW Morgan Street: 40th Avenue SW to Fauntleroy Way SW

Exhibit C-Table 2

Station	Major Pedestrian Route
85th	15 th Avenue NW: NW 92 nd Street to Holman Rd NW
Key Arena	W Republican/Republican Street: 3rd Avenue W to Warren Avenue N
	1st Avenue N: Denny Way to Roy Street
5th & Broad	John Street: Broad St to Aurora Avenue N
	5th Avenue N: Mercer Street to Denny Way
	Broad Street: 2nd Avenue to Harrison Street
Bell Street	Bell Street: 1st Avenue to Denny Way
	5th Avenue: Denny Way to Lenora Street
Westlake	Virginia Street: 3rd Avenue to Westlake Avenue
	5th Avenue: Lenora St to Pike Street
	Stewart Street: 3rd Avenue to 7th Avenue
	Olive Way: 3rd Avenue to 7th Avenue
2nd & Pike	Second Avenue: Virginia Street to Seneca Street
	Pike Street: Seventh Avenue to Pike Place
	Pine Street: Seventh Avenue to Pike Place
	First Avenue: Stewart Street to Pike Street
2nd & Madison	Second Avenue: Union Street to James Street
	Spring Street: Fifth Avenue to Waterfront
	Madison Street: Fifth Avenue to Waterfront
	First Avenue: Spring Street to Marion Street
2nd & Yesler	Second Avenue: Marion Street to S Washington Street
	Second Avenue Extension: S Washington Street to S Jackson Street
	Yesler Way: Third Avenue to Waterfront
	Occidental Avenue S: Yesler Way to S Jackson Street
	James Street: Third Avenue to Yesler Way

Exhibit C-Table 2

Station	Major Pedestrian Route
King Street Station	Third Avenue S: S King Street to Seahawk Stadium Plaza
	S Weller Street: Third Avenue S to 5th Avenue S
	Fourth Avenue S: S Jackson Street to S Royal Brougham Way
Safeco Field	S Royal Brougham Way: 4th Avenue S to First Avenue S
Lander	S Lander Street: E-3 Busway to Utah Avenue S
	First Avenue S: S Stacy Street to S Forest Street
	Utah Avenue S: S Stacy Street to S Lander Street
Delridge	SW Spokane Street: 26 th Ave SW to Avalon Way SW/Harbor Ave SW
	Delridge Way SW: SW Andover St to SW Dakota Street

EXHIBIT D

Exhibit D:

Monorail Guideway Design Submittals and Approval Milestones

D.1 Level of Completion Defined.

Each level of completion for design submittals and design approval milestones as used in this Agreement shall be defined as follows.

D.2. Guideway Design Concept Submittal

A submittal that presents structural design concepts, integration of public art, and the form, finish and materials associated with typical and special guideway structures of the Project or Project Segment. A presentation for review by the Monorail Review Panel of the Seattle Design Commission is a prerequisite to the City's acceptance of the guideway design concept submittal.

D.3. Guideway Design Concept Concurrence Milestone

The City may respond to guideway design concept submittal with comments. The guideway design concept phase of the Project or Project Segment is completed when the Director of Transportation, in consultation with the Director of Planning and Development, provides written notice of concurrence.

D.4. Preliminary Design Submittal

A submittal that presents the basic concept of the Project or Project Segment, including sufficient detail to provide certainty of location of route alignment; existing utilities and proposed major utility line re-locations; curb locations and traffic lane configurations; structural types, sizes and locations; typical foundation designs; new and proposed right-of-way limits; extent of roadway modifications; and other supporting concepts to define the intent of the Project. The preliminary design submittal will identify those elements of the Project that will be submitted for review and approval by the Director of Transportation and those elements that will be submitted for review and approval by the Director of Planning and Development, consistent with the provisions of Seattle Municipal Code. Preliminary design submittals may be phased by Project Segment, but must include preliminary design of anticipated Project Construction Packages; the preliminary design submittal may not be phased by Project Construction Package.

D.5. Preliminary Design Concurrence Milestone

The City may respond to preliminary design submittals with comments and corrections. The preliminary design phase of the Project or Project Segment is completed when the Director of Transportation provides written notice of concurrence.

D.6. In-Progress Design Submittal

A submittal that is sufficiently complete to illustrate the entire scope of the work of the Project, Project Segment, or Project Construction Package, including any proposed temporary use of Public Rights of Way for construction. The City will not accept any in-progress design submittals until the preliminary design submittal for the corresponding Project Segment has been completed.

A presentation for review by the Monorail Review Panel of the Seattle Design Commission is a prerequisite to the City's acceptance of any in-progress design submittals, with the exception of any in-progress design submittals for Project Construction Packages with a scope of work limited to utility relocation, demolition, grading, shoring, foundations, drainage and/or traffic signals.

D.7. In-Progress Design Concurrence Milestone

The City may respond to in-progress design submittals with comments and corrections. The in-progress design phase of the Project, Project Segment or Project Construction Package is completed when the Director of Transportation provides written notice of concurrence.

D.8. Final Design Submittal

The submittal that includes drawings, special provisions, supplemental technical specifications, for the Project, Project Segment or Project Construction Package that are complete for construction purposes (a.k.a. "Final Construction Plans"). All calculations shall be completed and checked in accordance with established quality control procedures. The City will not accept any final design submittals until the in-progress design submittal for the corresponding Project Segment has received a written notice of concurrence.

D.9. Final Design Approval Milestone

The City may respond to the final design submittal with comments and corrections. The final design phase of the Project, Project Segment or Project Construction Package is completed when the City approves the Project, Project Segment, or Project Construction Package for construction and issues a Project Construction Permit for Monorail Guideway.

D.10. West Seattle High-Rise Bridge Strengthening Design Submittals

This subsection D.10 contains additional requirements for the West Seattle High-Rise Bridge.

a. Type, Size & Location Report

SMP or the DBOM Contractor shall submit a Type, Size & Location (TS&L) Report, which shall include a complete layout of the guideway on the bridge. Typical Section sheets shall show the existing bridge deck cross-section with the new columns and split median barriers, for both the approach section and the main span section of the bridge. Plans shall show the layout of split median barriers fully dimensioned with lane widths and tapers, indicating final roadway configurations.

b. Design Quality Assurance/Quality Control Plan

SMP or the DBOM Contractor shall submit a design quality assurance/quality control plan, which shall include minimum qualifications for design staff and a plan for assuring quality throughout the design process.

c. Preliminary Design Submittal

The preliminary design submittal by SMP for the West Seattle High-Rise Bridge Strengthening shall include the following:

1. Determine the load strengthening, seismic retrofit and new construction required for the existing bridge. Computer model and analyze the existing bridge with the new monorail guideway added for AASHTO loads, monorail load conditions, and extreme loads such as seismic. Include the weight and effects of all new construction in the analysis. Provide load rating calculations that show that all elements of the bridge after the new construction will comply with the design criteria. Provide a testing report of any concrete or reinforcing bar material testing if such will be utilized in the load rating analysis. Provide a geotechnical report of existing pile capacities if such will be utilized in the load rating analysis. Provide draft specifications and special provisions.

2. The preliminary design submittal shall clearly show the outlines of all the new construction required on the bridge. Provide detail sheets showing anchor blocks, deviator blocks, diaphragms, column bases, cap beam strengthening, seismic retrofits, and any other bridge strengthening that is required. These sheets shall include plan, elevation, and section views. Post-tensioning sheets shall be provided that show the final force and location of extra post-tensioning. Provide a relocation plan for all utility relocations that are required, indicating rerouting and phased construction as needed.

d. In-Progress Design Submittal

The in-progress design submittal shall include the following:

Show the location, size and pattern of all reinforcing and post-tensioning that will be required. Provide post-tensioning details that show anchorages, extra reinforcing, and all hardware. All sections through new concrete shall be shown with reinforcing completely billed. Provide details of surface preparation of concrete, drilling holes, bonding anchors or bars. All structural steel added to the bridge shall be completely detailed and specified, with all connections shown. Provide specifications and special provisions. Provide detail on construction means and methods and a traffic control plan for staging construction to safely maintain traffic.

e. Final Design Submittal

The final design submittal shall include the following:

Provide drawings, special provisions, supplemental technical specifications, that are complete for construction purposes (“Final Construction Plans”) and construction quality assurance/quality control plans. All calculations shall be completed and checked in accordance with established quality control procedures.

f. Design Packages for West Seattle High-Rise Bridge

For purposes of the TS&L Report and the preliminary design submittal for the West Seattle High-Rise Bridge, the Contractor shall submit all required deliverables for the full length of the West Seattle High-Rise Bridge. The full length of the West Seattle High-Rise Bridge shall be understood to mean the entire guideway structure from where it first lands on the West Seattle High-Rise Bridge at Pier 8 to where it leaves at Pier 28, including all the adjacent guideway spans that are continuous with the spans that are on the bridge. At the in-progress design submittals and the final design submittals, the West Seattle High-Rise Bridge work may be divided into discrete construction packages that may be reviewed separately.

g. Deliverable List for West Seattle High-Rise Bridge Submittals

TS&L Report

- TS&L Report
- Pre-Construction Condition Survey

Design Quality Assurance/Quality Control Plan

Preliminary Design Submittal

- Preliminary Drawings
- Load Rating Calculations
- Material Testing Reports
- Geotechnical Reports

In-Progress Design Submittal

- In-Progress Drawings
- Traffic Control Plan
- Proposed Specifications/Special Provisions

Final Design Submittal

The submittal that includes drawings, special provisions, supplemental technical specifications, final calculations, and quality assurance and control plan that are complete for construction purposes (“Final Construction Plans”).

- Final Drawings
- Final Calculations
- Specifications/Special Provisions
- QA/QC Plan

D.11. Record Drawings

Preliminary as-built drawings for any Project Construction Package shall be submitted within two (2) weeks of completion of the construction, and Record Drawings shall be submitted before the City issues its final approval of the construction or certificate of occupancy for the Monorail Transit System; provided, that within sixty (60) days of final City acceptance of any work by the DBOM Contractor on City-owned utilities, SMP shall provide Record Drawings of such work.